

# UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT  
Filed December 16, 2004, 12:00 a.m. through December 30, 2004, 11:59 p.m.

Number 2005-2  
January 15, 2005

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The *Utah State Bulletin (Bulletin)* is an official noticing publication of the executive branch of Utah State Government. The Department of Administrative Services, Division of Administrative Rules produces the *Bulletin* under authority of Section 63-46a-10, *Utah Code Annotated* 1953.

Inquiries concerning administrative rules or other contents of the *Bulletin* may be addressed to the responsible agency or to: Division of Administrative Rules, 4120 State Office Building, Salt Lake City, Utah 84114, telephone (801) 538-3218, FAX (801) 538-1773. To view rules information, and on-line versions of the division's publications, visit: <http://www.rules.utah.gov/>

The information in this *Bulletin* is summarized in the *Utah State Digest (Digest)*. The *Digest* is available by E-mail or over the Internet. Visit <http://www.rules.utah.gov/publicat/digest.htm> for additional information.

Division of Administrative Rules, Salt Lake City 84114

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Printed in the United States of America

**Library of Congress Cataloging-in-Publication Data**

Utah state bulletin.

Semimonthly.

1. Delegated legislation--Utah--Periodicals. 2. Administrative procedure--Utah--Periodicals.

I. Utah. Office of Administrative Rules.

KFU440.A73S7

348.792'025--DDC

85-643197

# TABLE OF CONTENTS

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## 1. NOTICES OF PROPOSED RULES

### Administrative Services

#### Facilities Construction and Management

No. 27603 (Amendment): R23-1. Procurement of Construction .....	2
No. 27605 (Amendment): R23-2. Procurement of Architect-Engineer Services .....	7
No. 27615 (Amendment): R23-3. Planning and Programming for Capital Projects .....	9
No. 27610 (Amendment): R23-4. Suspension/Debarment and Contract Performance Review Committee.....	10
No. 27614 (New Rule): R23-26. Dispute Resolution.....	12

#### Records Committee

No. 27621 (New Rule): R35-1a. State Records Committee Definitions .....	17
No. 27625 (Amendment): R35-2. Declining Appeal Hearings.....	18
No. 27622 (Amendment): R35-3. Prehearing Conferences .....	19
No. 27624 (Amendment): R35-4. Compliance with State Records Committee Decisions and Orders.....	20
No. 27623 (Amendment): R35-5. Subpoenas Issued by the Records Committee.....	21
No. 27620 (Amendment): R35-6. Expedited Hearing .....	22

### Agriculture and Food

#### Regulatory Services

No. 27628 (Amendment): R70-440-2. Adopt by Reference .....	23
--	----

### Capitol Preservation Board (State)

#### Administration

No. 27631 (New Rule): R131-8. CPB Facilities and Grounds: Maintenance of Aesthetics.....	24
No. 27632 (New Rule): R131-9. State Capitol Preservation Board Art Program and Policy.....	26

### Commerce

#### Administration

No. 27633 (New Rule): R151-1. Department of Commerce General Provisions .....	29
No. 27634 (Amendment): R151-14-3. Adjudicative Proceedings .....	30
No. 27635 (Amendment): R151-35-3. Adjudicative Proceedings .....	31
No. 27636 (Amendment): R151-46b. Department of Commerce Administrative Procedures Act Rules .....	32

#### Occupational and Professional Licensing

No. 27600 (Amendment): R156-31b. Nurse Practice Act Rules .....	36
---	----

TABLE OF CONTENTS

---

Governor

Planning and Budget, Chief Information Officer

No. 27597 (New Rule): R365-300. Organization and Accountability for the Security of State  
Information Resources .....40

Health

Health Care Financing, Coverage and Reimbursement Policy

No. 27629 (New Rule): R414-507. Medicaid Long Term Care Managed Care .....42

Human Services

Services for People with Disabilities

No. 27626 (New Rule): R539-2. Service Coordination .....45

No. 27627 (New Rule): R539-3. Rights and Protections .....47

Labor Commission

Safety

No. 27616 (Amendment): R616-2-3. Safety Codes and Rules for Boilers and Pressure Vessels .....49

School and Institutional Trust Lands

Administration

No. 27611 (Repeal): R850-20. Mineral Resources .....50

No. 27612 (New Rule): R850-21. Oil, Gas and Hydrocarbon Resources .....58

No. 27613 (New Rule): R850-22. Bituminous-Asphaltic Sands and Oil Shale Resources .....65

No. 27609 (New Rule): R850-23. Sand, Gravel and Cinders Permits .....72

No. 27607 (New Rule): R850-24. General Provisions: Mineral and Material Resources,  
Mineral Leases and Material Permits .....76

No. 27606 (New Rule): R850-25. Mineral Leases and Materials Permits .....81

No. 27604 (New Rule): R850-26. Coal Leases .....84

No. 27601 (New Rule): R850-27. Geothermal Steam .....86

No. 27602 (Repeal): R850-130. Materials Permits .....89

**2. NOTICES OF CHANGES IN PROPOSED RULES**

Administrative Services

Child Welfare Parental Defense (Office of)

No. 27518: R19-1. Parental Defense Training Standards .....94

Insurance

Administration

No. 27504: R590-203. Health Grievance Review Process and Disability Claims .....95

**3. FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION**

Administrative Services

Facilities Construction and Management

No. 27608: R23-2. Procurement of Architect-Engineer Services ..... 99

Insurance

Administration

No. 27618: R590-197. Treatment of Guaranty Association Assessments as Qualified Assets ..... 99

No. 27619: R590-198. Valuation of Life Insurance Policies Rule ..... 100

Labor Commission

Industrial Accidents

No. 27595: R612-9. Designation of the Initial Assessment of Noncompliance Penalties as an Informal Proceeding..... 100

School and Institutional Trust Lands

Administration

No. 27598: R850-10. Expedited Rulemaking..... 101

**4. NOTICES OF RULE EFFECTIVE DATES ..... 102**

**5. 2005 RULES INDEX..... 103**

**6. COMPLETE 2004 RULES INDEX..... 108**



## NOTICES OF PROPOSED RULES

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A state agency may file a PROPOSED RULE when it determines the need for a new rule, a substantive change to an existing rule, or a repeal of an existing rule. Filings received between December 16, 2004, 12:00 a.m., and December 30, 2004, 11:59 p.m. are included in this, the January 15, 2005, issue of the *Utah State Bulletin*.

In this publication, each PROPOSED RULE is preceded by a RULE ANALYSIS. This analysis provides summary information about the PROPOSED RULE including the name of a contact person, anticipated cost impact of the rule, and legal cross-references.

Following the RULE ANALYSIS, the text of the PROPOSED RULE is usually printed. New rules or additions made to existing rules are underlined (e.g., example). Deletions made to existing rules are struck out with brackets surrounding them (e.g., [~~example~~]). Rules being repealed are completely struck out. A row of dots in the text (. . . . .) indicates that unaffected text was removed to conserve space. If a PROPOSED RULE is too long to print, the Division of Administrative Rules will include only the RULE ANALYSIS. A copy of each rule that is too long to print is available from the filing agency or from the Division of Administrative Rules.

The law requires that an agency accept public comment on PROPOSED RULES published in this issue of the *Utah State Bulletin* until at least February 14, 2005. The agency may accept comment beyond this date and will list the last day the agency will accept comment in the RULE ANALYSIS. The agency may also hold public hearings. Additionally, citizens or organizations may request the agency to hold a hearing on a specific PROPOSED RULE. Section 63-46a-5 (1987) requires that a hearing request be received "in writing not more than 15 days after the publication date of the PROPOSED RULE."

From the end of the public comment period through May 15, 2005, the agency may notify the Division of Administrative Rules that it wants to make the PROPOSED RULE effective. The agency sets the effective date. The date may be no fewer than 31 days nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file a CHANGE IN PROPOSED RULE in response to comments received. If the Division of Administrative Rules does not receive a NOTICE OF EFFECTIVE DATE or a CHANGE IN PROPOSED RULE, the PROPOSED RULE filing lapses and the agency must start the process over.

The public, interest groups, and governmental agencies are invited to review and comment on PROPOSED RULES. *Comment may be directed to the contact person identified on the RULE ANALYSIS for each rule.*

PROPOSED RULES are governed by *Utah Code* Section 63-46a-4 (2001); and *Utah Administrative Code* Rule R15-2, and Sections R15-4-3, R15-4-4, R15-4-5, R15-4-9, and R15-4-10.

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**The Proposed Rules Begin on the Following Page.**

**Administrative Services, Facilities  
Construction and Management  
R23-1  
Procurement of Construction**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 27603

FILED: 12/23/2004, 14:50

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The reason for the amendment is to incorporate changes in the Division's procurement methods in the procurement of construction that were agreed to by a comprehensive review committee that included legislators, Building Board members, contractors, subcontractors, and state employees.

**SUMMARY OF THE RULE OR CHANGE:** The amendments make the following changes: 1) modifies the standard (default) procurement methods as follows: the competitive sealed bidding method, which includes the multi-step sealed bidding method, becomes the standard method for procuring construction when the design/bid/build contracting approach is used, clarifies that the competitive sealed proposals method remains the standard method for procuring construction when the construction manager/general contractor contracting approach is used, provides for exceptions approved by the director; 2) modifies provisions related to public access to past performance and reference information relative to contractors; 3) clarifies provisions related to the formal scoring of proposals; 4) provides that the design/bid/build method is the standard construction contracting method for contracts under \$1,500,000 and the construction manager/general contractor is the standard method for contracts over \$1,500,000. Allows the director to make exceptions to these standards; 5) modifies the descriptions of the construction contracting methods; and 6) makes a number of minor and technical corrections and clarifications.

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Subsection 63-56-14(2) provides for the State Building Board to adopt rules governing the procurement of construction by the division. This rule, including the amendments, implements and interprets Title 63, Chapter 56 (State Procurement Code) and Title 63A, Chapter 5 (State Building Board - Division of Facilities Construction and Management).

**ANTICIPATED COST OR SAVINGS TO:**

❖ **THE STATE BUDGET:** The amendments and other procedural changes are expected to reduce the cost for contractors to participate in the procurement process. This will improve the competition for state construction contracts which may result in savings to the state. The identification of standard construction contracting methods for different sizes of contracts reflects the methods that have proven to be most cost effective. The actual savings resulting from these changes depend on the circumstances of a specific project,

the condition of the construction market and the volume of construction work being done by the division. As a result, it is not possible to estimate the amount of savings.

❖ **LOCAL GOVERNMENTS:** This rule does not affect local government. Therefore, there is no anticipated cost or savings to local government.

❖ **OTHER PERSONS:** The changes will reduce the cost for contractors to participate in the procurement process for state building construction. The actual savings resulting from these changes depend on the circumstances of a specific contractor and project and the condition of the construction market. As a result, it is not possible to estimate the amount of savings.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The changes in the rule, along with other procedural changes that are being made, will reduce the costs for contractors to participate in the procurement process for state building construction due to the following: 1) the general use of the competitive sealed bidding method, including multi-step sealed bidding, for contracts under \$1,500,000. This method is simpler and less expensive for contractors to comply with; and 2) the clarification of scoring and selection under the competitive sealed proposals method will help contractors identify what aspects of their proposal should receive the most attention, thereby allowing them to expend less effort on other aspects of their proposal. It is not possible to quantify the extent of savings that will result.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** These rule changes are the product of a review of the division's procurement processes that was performed to address concerns raised by the construction industry, legislators and the division. The changes will improve and simplify the procurement process which will benefit businesses wishing to do business with the division.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ADMINISTRATIVE SERVICES  
FACILITIES CONSTRUCTION AND MANAGEMENT  
Room 4110 STATE OFFICE BLDG  
450 N MAIN ST  
SALT LAKE CITY UT 84114-1201, or  
at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

Kenneth Nye at the above address, by phone at 801-538-3284, by FAX at 801-538-3267, or by Internet E-mail at [knye@utah.gov](mailto:knye@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 02/14/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 02/15/2005

AUTHORIZED BY: Keith Stepan, Director

**R23. Administrative Services, Facilities Construction and Management.**

**R23-1. Procurement of Construction.**

**R23-1-5. Competitive Sealed Bidding.**

(1) Use. Competitive sealed bidding, which includes multi-step sealed bidding, ~~[may]shall~~ be used for the procurement of construction if the design-bid-build method of construction contract management described in Subsection R23-1-45(5)(b) is used unless a determination is made by the Director in accordance with Subsection R23-1-115(1)(c) that the competitive sealed proposals procurement method should be used.~~[-~~

- ~~— (a) the contract is expected to cost \$250,000 or less;~~
- ~~— (b) the contract is expected to cost more than \$250,000 but less than \$1,000,000 and the Director determines in writing that competitive sealed bidding is the most appropriate method for procuring the contract due to one or more of the following circumstances:~~
  - ~~— (i) the contract is predominantly for products or materials and it is not necessary to evaluate the features of the products or materials in the selection process; or~~
  - ~~— (ii) the contract is for work for which there is not a significant benefit derived from evaluating the past performance, project management plans or other qualification factors of the contractor; or~~
  - ~~— (c) the Director determines in writing that other unique and compelling factors exist causing it to be in the best interests of the procuring agencies to use the competitive sealed bidding method.~~

(2) Public Notice of Invitations For Bids.

(a) Public notice of Invitations For Bids shall be publicized electronically on the Internet; and may be publicized in any or all of the following as determined appropriate:

- (i) In a newspaper having general circulation in the area in which the project is located;
- (ii) In appropriate trade publications;
- (iii) In a newspaper having general circulation in the state;
- (iv) By any other method determined appropriate.

(b) A copy of the public notice shall be available for public inspection at the principal office of the Division in Salt Lake City, Utah.

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**R23-1-10. Multi-Step Sealed Bidding.**

(1) Description. Multi-step sealed bidding is a two-phase process. In the first phase bidders submit unpriced technical offers to be evaluated. In the second phase, bids submitted by bidders whose technical offers are determined to be acceptable during the first phase are considered. It is designed to obtain the benefits of competitive sealed bidding by award of a contract to the lowest responsive, responsible bidder, and at the same time obtain the benefits of the competitive sealed proposals procedure through the solicitation of technical offers and the conduct of discussions to arrive at technical offers and terms acceptable to the Division and suitable for competitive pricing.

(2) Use. The multi-step sealed bidding method may be used when the Director deems it to the advantage of the state. Multi-step sealed bidding may be used when it is considered desirable:

(a) to invite and evaluate technical offers or statements of qualifications to determine their acceptability to fulfill the purchase description requirements;

(b) to conduct discussions for the purposes of facilitating understanding of the technical offer and purchase description requirements and, where appropriate, obtain supplemental information, permit amendments of technical offers, or amend the purchase description;

(c) to accomplish (a) or (b) prior to soliciting bids; and

(d) to award the contract to the lowest responsive and responsible bidder in accordance with the competitive sealed bidding procedures.

(3) Pre-Bid Conferences In Multi-Step Sealed Bidding. The Division may hold one or more pre-bid conferences prior to the submission of unpriced technical offers or at any time during the evaluation of the unpriced technical offers.

(4) Procedure for Phase One of Multi-Step Sealed Bidding.

(a) Public Notice. Multi-step sealed bidding shall be initiated by the issuance of a Public Notice in the form required by Subsections R23-1-5(2) and (3).

(b) Invitation for Bids. The multi-step Invitation for Bids shall state:

(i) that unpriced technical offers are requested;

(ii) when bids are to be submitted (if they are to be submitted at the same time as the unpriced technical offers, the bids shall be submitted in a separate sealed envelope);

(iii) that it is a multi-step sealed bid procurement, and bids will be considered only in the second phase and only from those bidders whose unpriced technical offers are found acceptable in the first phase;

(iv) the criteria to be used in the evaluation of the unpriced technical offers;

(v) that the Division, to the extent the Director finds necessary, may conduct oral or written discussions of the unpriced technical offers;

(vi) that the item being procured shall be furnished in accordance with the bidders technical offer as found to be finally acceptable and shall meet the requirements of the Invitation for Bids; and

(vii) that bidders may designate those portions of the unpriced technical offers which contain trade secrets or other proprietary data which are to remain confidential. If the bidder selected for award has requested in writing the non-disclosure of trade secrets and other proprietary data so identified, the Director shall examine the request to determine its validity prior to award of the contract. If the parties do not agree as to the disclosure of data in the contract, the Director shall inform the bidder in writing what portion of the offer will be disclosed and that, unless the bidder withdraws the offer, it will be disclosed.

(c) Amendments to the Invitation for Bids. After receipt of unpriced technical offers, amendments to the Invitation for Bids shall be distributed only to bidders who submitted unpriced technical offers and they shall be allowed to submit new unpriced technical offers or to amend those submitted. If, in the opinion of the Director, a contemplated amendment will significantly change the nature of the procurement, the Invitation for Bids shall be canceled in accordance with Subsection R23-1-5(12) and a new Invitation for Bids may be issued.

(d) Receipt and Handling of Unpriced Technical Offers. After the date and time established for the receipt of unpriced technical offers, a register of bidders shall be open to public inspection. Prior to award, unpriced technical offers shall be shown only to those

involved with the evaluation of the offers. The unpriced technical offer of the successful bidder shall be open to public inspection for a period of 90 days after award of the contract. Unpriced technical offers of bidders who are not awarded contracts shall not be open to public inspection.

(e) Evaluation of Unpriced Technical Offers. The unpriced technical offers submitted by bidders shall be evaluated solely in accordance with the criteria set forth in the Invitation for Bids which may include an evaluation of the past performance of the bidder. The unpriced technical offers shall be categorized as acceptable or unacceptable. The Director shall record in writing the basis for finding an offer unacceptable and make it part of the procurement file.

(f) Discussion of Unpriced Technical Offers. Discussion of technical offers may be conducted with bidders who submit an acceptable technical offer. During the course of discussions, any information derived from one unpriced technical offer shall not be disclosed to any other bidder. Once discussions are begun, any bidder who has not been notified that its offer has been found unacceptable may submit supplemental information modifying or otherwise amending its technical offer until the closing date established by the Director. Submission may be made at the request of the Director or upon the bidder's own initiative.

(g) Notice of Unacceptable Unpriced Technical Offer. When the Director determines a bidder's unpriced technical offer to be unacceptable, he shall notify the bidder in writing. Such bidders shall not be afforded an additional opportunity to supplement technical offers.

(h) Confidentiality of Past Performance and Reference Information. Confidentiality of past performance and reference information shall be maintained in accordance with Subsection R23-1-15(10).

(5) Mistakes During Multi-Step Sealed Bidding. Mistakes may be corrected or bids may be withdrawn during phase one:

(a) before unpriced technical offers are considered;

(b) after any discussions have commenced under Subsection R23-1-10(4)(f); or

(c) when responding to any amendment of the Invitation for Bids. Otherwise mistakes may be corrected or withdrawal permitted in accordance with Subsection R23-1-5(10).

(6) Carrying Out Phase Two.

(a) Initiation. Upon the completion of phase one, the Director shall either:

(i) open bids submitted in phase one (if bids were required to be submitted) from bidders whose unpriced technical offers were found to be acceptable; provided, however, that the offers have remained unchanged, and the Invitation for Bids has not been amended subsequent to the submittal of bids; or

(ii) invite each acceptable bidder to submit a bid.

(b) Conduct. Phase two is to be conducted as any other competitive sealed bid procurement except:

(i) as specifically set forth in Section R23-1-10; and

(ii) no public notice is given of this invitation to submit.

### **R23-1-15. Competitive Sealed Proposals.**

(1) Use. ~~Except as specifically provided for elsewhere in this rule, the Division shall procure construction through the use of competitive sealed proposals. After consideration of the following factors, the Board and Director determine that the use of competitive sealed proposals is generally more advantageous to the state than~~

~~competitive sealed bidding for the procurement of construction by the Division.~~

~~—(a) The Division's experience with competitive sealed bidding and competitive sealed proposals indicates that construction contracts procured under the competitive sealed proposal method tend to have a lower level of change orders while being more likely to be completed on time;~~

~~—(b) There is a need to consider other factors such as the skills, experience, and past performance of contractors in addition to the initial cost reflected in the bid amount; and~~

~~—(c) It is in the best interests of the state to select the proposal which provides the best value to the procuring agencies after giving due consideration to qualifications, past performance, management plans, cost, and other factors applicable to the project.~~

~~—(d) Notwithstanding the above, the procurement of the types of contracts described in Subsection R23-1-5(1) may not warrant the additional effort required for the competitive sealed proposal method.~~

~~—(2)]~~

(a) Construction Management. The competitive sealed proposals procurement method shall be used in the procurement of a construction manager under the construction manager/general contractor method of construction contract management described in subsection R23-1-45(5)(d) due to the need to consider qualifications, past performance and services offered in addition to the cost of the services and because only a small portion of the ultimate construction cost is typically considered in this selection.

(b) Design-Build. In order to meet the requirements of Section 63-56-43.1, competitive sealed proposals shall be used to procure design-build contracts.

(c) Design-Bid-Build. The competitive sealed proposals procurement method may be used for procuring a contractor under the design-bid-build method of construction contract management described in subsection R23-1-45(5)(b) only after the Director makes a determination that it is in the best interests of the state to use the competitive sealed proposals method due to unique aspects of the project that warrant the consideration of qualifications, past performance, schedule or other factors in addition to cost.

(2) Documentation. The Director's determination made under subsection R23-1-15(1)(c) shall be documented in writing and retained in the project file.

(3) Public Notice.

(a) Public notice of the Request for Proposals shall be publicized in the same manner provided for giving public notice of an Invitation for Bids, as provided in Subsection R23-1-5(2).

(b) The public notice shall include:

(i) a brief description of the project;

(ii) directions on how to obtain the Request for Proposal documents;

(iii) notice of any mandatory pre-proposal meetings; and

(iv) the closing date and time by which the first submittal of information is required;

(4) Proposal Preparation Time. Proposal preparation time is the period of time between the date of first publication of the public notice and the date and time set for the receipt of proposals by the Division. In each case, the proposal preparation time shall be set to provide offerors a reasonable time to prepare their proposals. The time between the first publication of the public notice and the earlier of the first required submittal of information or any mandatory pre-proposal meeting shall be not less than ten calendar days, unless a

shorter time is deemed necessary for a particular procurement as determined, in writing, by the Director.

(5) Form of Proposal. The Request for Proposals may state the manner in which proposals are to be submitted, including any forms for that purpose.

(6) Addenda to Requests for Proposals. Addenda to the requests for proposals may be made in the same manner provided for addenda to the bidding documents in connection with Invitations for Bids set forth in Subsection R23-1-5(6) except that addenda may be issued to qualified offerors until the deadline for best and final offers.

(7) Modification or Withdrawal of Proposals.

(a) Proposals may be modified prior to the due dates established in the Request for Proposals.

(b) Proposals may be withdrawn until the notice of selection is issued.

(8) Late Proposals, and Late Modifications. Except for modifications allowed pursuant to negotiation, any proposal, or modification received at the location designated for receipt of proposals after the due dates established in the Request for Proposals shall be deemed to be late and shall not be considered unless there are no other offerors.

(9) Receipt and Registration of Proposals.

(a) After the date established for the first receipt of proposals or other required information, a register of offerors shall be prepared and open to public inspection. Prior to award, proposals and modifications shall be shown only to procurement and other officials involved with the review and selection of proposals.

(b) Except as provided in this rule, proposals of the successful offeror shall be open to public inspection after award of the contract. Proposals of offerors who are not awarded contracts shall not be open to public inspection although the amount of each offeror's cost proposal shall be disclosed after the contract is awarded.

(c) The Request for Proposals may provide that certain information required to be submitted by the offeror shall be considered confidential and classified as protected if such information meets the provisions of Section 63-2-304 of the Government Records Access and Management Act.

(d) If the offeror selected for award has requested in writing the non-disclosure of trade secrets and other proprietary data so identified, the Director shall examine the request to determine its validity prior to award of the contract. If the parties do not agree as to the disclosure of data in the contract, the Director shall inform the offeror in writing what portion of the proposal will be disclosed and that, unless the offeror withdraws the proposal, it will be disclosed.

(10) Confidentiality of Past Performance and Reference Information. The Board finds that it is necessary to maintain the confidentiality of ~~[individual responses from persons who are contacted as references]~~ past performance and reference information in order to avoid competitive injury and to encourage those persons providing the information to respond in an open and honest manner without fear of retribution. Accordingly, ~~[responses to requests for references are]~~ records containing past performance and reference information are classified as protected records under the provisions of Subsections 63-2-304(2) and (6) and shall be disclosed only ~~[in summary form]~~ to those persons involved with the performance evaluation, the contractor that the information addresses and procurement and other officials involved with the review and selection of proposals. The Division may, however, provide reference information to other governmental entities for use in their procurement activities and to other parties when requested by the

contractor that is the subject of the information. ~~[This Subsection (10) applies only to responses from references submitted by the offeror.]~~

(11) Evaluation of Proposals.

(a) The evaluation of proposals shall be conducted by an evaluation committee appointed by the Director that may include representatives of the Division, the Board, other procuring agencies, and contractors, architects, engineers, and others of the general public. Each member of the selection committee shall certify as to his lack of conflicts of interest.

(b) The Request for Proposals shall state all of the evaluation factors and the relative importance of price and other evaluation factors.

(c) The evaluation shall be based on the evaluation factors set forth in the request for proposals. Numerical rating systems may be used but are not required. Factors not specified in the request for proposals shall not be considered.

(d) Proposals may be initially classified as potentially acceptable or unacceptable. Offerors whose proposals are unacceptable shall be so notified by the Director in writing and they may not continue to participate in the selection process.

(e) This classification of proposals may occur at any time during the selection process once sufficient information is received to consider the potential acceptability of the offeror.

(f) The request for proposals may provide for a limited number of offerors who may be classified as potentially acceptable. In this case, the offerors considered to be most acceptable, up to the number of offerors allowed, shall be considered acceptable.

(12) Proposal Discussions with Individual Offerors.

(a) Unless only one proposal is received, proposal discussions with individual offerors, if held, shall be conducted with no less than the offerors submitting the two best proposals.

(b) Discussions are held to:

(i) Promote understanding of the procuring agency's requirements and the offerors' proposals; and

(ii) Facilitate arriving at a contract that will be most advantageous to the procuring agencies taking into consideration price and the other evaluation factors set forth in the request for proposals.

(c) Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussions and revisions of proposals. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors. Any oral clarification or change of a proposal shall be reduced to writing by the offeror.

(13) Best and Final Offers. If utilized, the Director shall establish a common time and date to submit best and final offers. Best and final offers shall be submitted only once unless the Director makes a written determination before each subsequent round of best and final offers demonstrating that another round is in the best interest of the procuring agencies and additional discussions will be conducted or the procuring agencies' requirements may be changed. Otherwise, no discussion of, or changes in, the best and final offers shall be allowed prior to award. Offerors shall also be informed that if they do not submit a notice of withdrawal or another best and final offer, their immediate previous offer will be construed as their best and final offer.

(14) Mistakes in Proposals.

(a) Mistakes discovered before the established due date. An offeror may correct mistakes discovered before the time and date established in the Request for Proposals for receipt of that

information by withdrawing or correcting the proposal as provided in Subsection R23-1-15(7).

(b) Confirmation of proposal. When it appears from a review of the proposal before award that a mistake has been made, the offeror may be asked to confirm the proposal. Situations in which confirmation may be requested include obvious, apparent errors on the face of the proposal or a proposal amount that is substantially lower than the other proposals submitted. If the offeror alleges mistake, the proposal may be corrected or withdrawn as provided for in this section.

(c) Minor formalities. Minor formalities, unless otherwise corrected by an offeror as provided in this section, shall be treated as they are under Subsection R23-1-5(10)(c).

(c) Mistakes discovered after award. Offeror shall be bound to all terms, conditions and statements in offeror's proposal after award of the contract.

(15) Award.

(a) Award Documentation. A written determination shall be made showing the basis on which the award was found to be most advantageous to the state based on the evaluation factors set forth in the Request for Proposals. This requirement may be satisfied through documentation of a scoring of the proposals based on the evaluation factors and associated points as identified in the Request for Proposals.

(b) One proposal received. If only one proposal is received in response to a Request for Proposals, the Director may, as he deems appropriate, make an award or resolicit for the purpose of obtaining additional competitive sealed proposals.

(16) Publicizing Awards. After a contract is entered into, notice of award shall be available in the principal office of the Division in Salt Lake City, Utah.

#### **R23-1-20. Small Purchases.**

(1) Procurements of \$50,000 or Less.

(a) The Director may make procurements of construction estimated to cost \$50,000 or less by soliciting at least two firms to submit written quotations. The award shall be made to the [person]firm offering the lowest acceptable quotation.

(b) The names of the persons submitting quotations and the date and amount of each quotation shall be recorded and maintained as a public record by the Division.

(c) If the Director determines that other factors in addition to cost should be considered in a procurement of construction estimated to cost \$50,000 or less, the Director shall solicit proposals from at least two firms. The award shall be made to the firm offering the best proposal as determined through application of the procedures provided for in Section R23-1-15 except that a public notice is not required and only invited firms may submit proposals.

(2) Procurements of \$5,000 or Less. The Director may make small purchases of construction of \$5,000 or less in any manner that he shall deem to be adequate and reasonable.

(3) Division of Procurements. Procurements shall not be divided in order to qualify for the procedures outlined in this section.

#### **R23-1-45. Methods of Construction Contract Management.**

(1) Application. This section contains provisions applicable to the selection of the appropriate type of construction contract management.

(2) Flexibility. The Director shall have sufficient flexibility in formulating the construction contract management method for a particular project to fulfill the needs of the procuring agencies. In

each instance consideration commensurate with the project's size and importance should be given to all the appropriate and effective means of obtaining both the design and construction of the project. The methods for achieving the purposes set forth in this rule are not to be construed as an exclusive list.

(3) Selecting the Method of Construction Contracting. In selecting the construction contracting method, the Director shall consider the results achieved on similar projects in the past, the methods used, and other appropriate and effective methods and how they might be adapted or combined to fulfill the needs of the procuring agencies. The use of the [single prime contractor]design-bid-build method [in conjunction with the sequential design and construction approach] is an appropriate contracting method for the majority of construction contracts entered into by the Division with a cost equal to or less than \$1,500,000 and the construction manager/general contractor method is an appropriate contracting method for the majority of construction contracts entered into by the Division with a cost greater than \$1,500,000. The Director shall include a statement in the project file setting forth the basis for using any [other] construction contracting method other than those suggested in the preceding sentence.

(4) Criteria for Selecting Construction Contracting Methods. Before choosing the construction contracting method to use, the Director shall consider the factors outlined in Subsection 63-56-36(1)(c).

(5) General Descriptions.

(a) Application of Descriptions. The following descriptions are provided for the more common contracting methods. The methods described are not all mutually exclusive and may be combined on a project. These descriptions are not intended to be fixed for all construction projects of the State. In each project, these descriptions may be adapted to fit the circumstances of that project.

(b) [Single Prime Contractor. The single prime contractor]Design-Bid-Build. The design-bid-build method is typified by one business, acting as a general contractor, contracting with the state to complete [an entire]a construction project in accordance with drawings and specifications provided by the state within a defined time period. Generally the drawings and specifications are prepared by an architectural or engineering firm under contract with the state. Further, while the general contractor may take responsibility for successful completion of the project, much of the work may be performed by specialty contractors with whom the prime contractor has entered into subcontracts.

(c) [Multiple Prime Contractors. Under the multiple prime contractor method, the Division contracts directly with a number of specialty contractors to complete portions of the project in accordance with the Division's drawings and specifications. The Division may have primary responsibility for successful completion of the entire project, or the contracts may provide that one of the multiple prime contractors has this responsibility.

—(d)—Design-Build. In a design-build project, a business contracts directly with the Division to meet requirements described in a set of performance specifications. The design-build contractor is responsible for both design and construction. This method can include instances where the design-build contractor supplies the site as part of the package.

(e)d) Construction Manager/General Contractor. A construction manager/general contractor is a [person]firm experienced in construction that [has the ability]provides professional services to evaluate and to implement drawings and specifications as they affect time, cost, and quality of construction

and the ability to coordinate the construction of the project, including the administration of change orders. The Division may contract with the construction manager/general contractor early in a project to assist in the development of a cost effective design. The construction manager/general contractor will generally become the general contractor for the project and procure subcontract work at a later date. ~~[may become the single prime contractor, or may guarantee that the project will be completed on time and will not exceed a specified maximum price. This method is frequently used on fast track projects with the construction manager obtaining subcontractors through the issuance of multiple bid packages as the design is developed. A Construction Manager, including a Construction Manager/General Contractor, shall be selected using one of the source selection methods provided for in Sections 63-56-20 through 63-56-35.8.]~~ The procurement of a construction manager/general contractor may be based, among other criteria, on proposals for a management fee which is either a lump sum or a percentage of construction costs with a guaranteed maximum cost. If the design is sufficiently developed prior to the selection of a construction manager/general contractor, the procurement may be based on proposals for a lump sum or guaranteed maximum cost for the construction of the project. The contract with the construction manager/general contractor may provide for a sharing of any savings which are achieved below the guaranteed maximum cost. When entering into any subcontract that was not specifically included in the Construction Manager/General Contractor's cost proposal submitted in the original procurement of the Construction Manager/General Contractor's services, the Construction Manager/General Contractor shall procure that subcontractor by using one of the source selection methods provided for in Sections 63-56-20 through 63-56-35.8 in ~~the same~~ a similar manner as if the subcontract work was procured directly by the Division. ]

~~—(f) Sequential Design and Construction. Sequential design and construction denotes a method in which design of substantially the entire structure is completed prior to beginning the construction process.~~

~~—(g) Phased Design and Construction. Phased design and construction denotes a method in which construction is begun when appropriate portions have been designed but before design of the entire structure has been completed. This method is also known as fast track construction.]~~

**KEY: contracts, public buildings, procurement**

~~[May 3, 2002]~~ **2005**

**Notice of Continuation June 6, 2002**

63A-5-103 et seq.

63-56-14(2)

63-56-20(7)

▼ ————— ▼

**Administrative Services, Facilities  
Construction and Management  
R23-2  
Procurement of Architect-Engineer  
Services**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 27605

FILED: 12/23/2004, 14:52

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The reason for the amendment is to incorporate changes in the Division's procedures for the procurement of architect-engineer services.

The changes were agreed to by a comprehensive review committee that included legislators, Building Board members, architects, engineers, and state employees. In addition, several minor changes are being made that were not addressed by the review committee.

**SUMMARY OF THE RULE OR CHANGE:** The amendments modify provisions related to public access to past performance and reference information relative to architects and engineers. They also clarify the evaluation criteria and the submittal requirements.

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Subsection 63-56-14(2); Title 63, Chapter 56; and Title 63A, Chapter 5

**ANTICIPATED COST OR SAVINGS TO:**

❖ **THE STATE BUDGET:** The amendments do not make any substantive changes in the Division's procurement process. As a result, they are not expected to result in any significant costs or savings.

❖ **LOCAL GOVERNMENTS:** This rule does not affect local government. Therefore, there is no anticipated cost or savings to local government.

❖ **OTHER PERSONS:** The amendments do not make any substantive changes in the process required of architects and engineers wishing to perform work for the State. As a result, no significant costs or savings are anticipated.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The amendments do not make any substantive changes in the process required of architects and engineers wishing to perform work for the State. As a result, no significant changes are anticipated in compliance costs.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** These rule changes are the product of a review of the Division's procurement processes that was performed to address concerns raised by the construction industry, legislators and the Division. While the changes to this rule are minor and have no fiscal impact, additional changes that are being made in procedures that implement the rule will result in savings to architects and engineers.

**THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:**

ADMINISTRATIVE SERVICES  
FACILITIES CONSTRUCTION AND MANAGEMENT  
Room 4110 STATE OFFICE BLDG  
450 N MAIN ST  
SALT LAKE CITY UT 84114-1201, or

at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

Kenneth Nye at the above address, by phone at 801-538-3284, by FAX at 801-538-3267, or by Internet E-mail at knye@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 02/14/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 02/15/2005

AUTHORIZED BY: Keith Stepan, Director

**R23. Administrative Services, Facilities Construction and Management.**

**R23-2. Procurement of Architect-Engineer Services.**

**R23-2-3. Register of Architectural/Engineering Firms.**

(1) Architects and engineers interested in being considered for architect-engineer services procured by the Division under Section R23-2-19 may submit an annual statement of qualifications and performance data.

(2) The Division shall maintain a file of information submitted under Subsection (1).

(3) Except for services procured under Sections R23-2-17 and R23-2-19, an updated or project specific statement of qualifications shall generally be required in order to be considered in procurements of services for a specific project as provided in the solicitation.

**R23-2-7. Addenda to Solicitations.**

Addenda to the solicitation may be made in the same manner provided for addenda to the bidding documents in connection with Invitations for Bids set forth in Subsection R23-1-5(6) except that addenda may be issued until the selection of an architect or engineer is completed.

**R23-2-10. Receipt and Registration of Submittals.**

After the date established for the first submittal of information, a register of submitting architects and engineers shall be prepared and open to public inspection. Prior to award, proposals and modifications shall be shown only to procurement officials and other persons involved with the review and selection process.

**R23-2-11. Disclosure of Contents of Submittals and References.**

(1) Except as provided in this rule, submittals of the successful architect or engineer shall be open to public inspection after award of the contract. Submittals of architects and engineers who are not awarded contracts shall not be open to public inspection.

(2) The Solicitation may provide that certain information required to be submitted by the offeror shall be considered confidential and classified as protected if such information meets the provisions of Section 63-2-304 of the Government Records Access and Management Act.

(3) If the architect or engineer selected for award has requested in writing the non-disclosure of trade secrets and other proprietary data so identified, the Director shall examine the request to

determine its validity prior to award of the contract. If the parties do not agree as to the disclosure of data in the contract, the Director shall inform the architect or engineer in writing what portion of the proposal will be disclosed and that, unless the architect or engineer withdraws the submittal, it will be disclosed.

(4) The Board finds that it is necessary to maintain the confidentiality of ~~[individual responses from persons who are contacted as references]~~ past performance and reference information in order to avoid competitive injury and to encourage those persons providing the information to respond in an open and honest manner without fear of retribution. Accordingly, ~~[responses to requests for references are]~~ records containing past performance and reference information are classified as protected records under the provisions of Subsection 63-2-304(2) and (6) and shall be disclosed only ~~[in summary form]~~ to those persons involved with the performance evaluation, the architect-engineer that the information addresses and persons involved with the review and selection of [process]submittals. The Division may, however, provide reference information to other governmental entities for use in their procurement activities and to other parties when requested by the architect-engineer that is the subject of the information. ~~[This Subsection (4) applies only to responses from references submitted by the architect or engineer.]~~

**R23-2-13. Evaluation and Ranking.**

(1) The selection committee shall evaluate the relative competence and qualifications of architects and engineers who submit the required information.

(2) The evaluation shall be based on evaluation factors set forth in the solicitation and may include:

- (a) past performance and references;
- (b) [references]qualifications and experience of the firm and key individuals;
- (c) plans for managing and avoiding project risks;
- (d) interviews; and
- (e) other factors that indicate the relevant competence and qualifications of the ~~[architect or engineer]~~ architect-engineer and the architect-engineer's ability to satisfactorily provide the desired services.

(3) The evaluation may be conducted in two phases with the first phase identifying no less than the top three ranked firms to be evaluated further in the second phase unless less than three firms are competing for the contract.

(4) Numerical rating systems may be used but are not required.

(5) The evaluation committee shall rank at least the top three firms. Notice of the selection results shall be provided to each firm competing for the contract.

**R23-2-16. Performance Evaluation.**

(1) The ~~[using agency and staff from the]~~ Division shall evaluate the performance of the architectural/engineering firm and shall provide an opportunity for the using agency to comment on the Division's evaluation.

(2) This rating shall become a part of the record of that architectural/engineering firm within the Division. The architectural/engineering firm shall be apprised in writing of ~~[their]~~ its performance rating at the end of the project and may enter ~~[their]~~ its response in the file.

(3) Confidentiality of the evaluation information shall be addressed as provided in Subsection R23-2-(4).

**KEY:** procurement[~~§~~], architects, engineers  
~~[September 15, 2004]~~2005  
 Notice of Continuation May 4, 2000  
 63A-5-103 et seq.  
 63-56-14(2)

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## Administrative Services, Facilities Construction and Management

### R23-3

### Planning and Programming for Capital Projects

**NOTICE OF PROPOSED RULE**  
 (Amendment)  
 DAR FILE No.: 27615  
 FILED: 12/23/2004, 16:02

#### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of the amendment is to modify an existing restriction that prevents a firm that prepares an architectural program for a division project from then participating in the design of that project. This change was requested by the architecture profession and was supported by a committee that reviewed the division's procurement practices.

**SUMMARY OF THE RULE OR CHANGE:** The existing rule prohibits, in most cases, a firm that prepares an architectural program for a Division of Facilities Construction and Management (DFCM) project from then being eligible for consideration in the selection of a design team for that project. The amendment provides that the firm preparing the program for a DFCM project is generally eligible to participate in the design of that project. The amendment also provides for exceptions where the programming firm would not be eligible to do the design.

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Sections 63A-5-103 and 63A-5-211, and Subsection 63A-5-103(1)

**ANTICIPATED COST OR SAVINGS TO:**

- ❖ **THE STATE BUDGET:** Some efficiencies may be gained in the design process for some projects as a result of the change. The amount of any savings will depend on the circumstances of the project and cannot be estimated.
- ❖ **LOCAL GOVERNMENTS:** This rule does not affect local government. Therefore, the Division does not anticipate any cost or savings to local government.
- ❖ **OTHER PERSONS:** A limited reduction in cost may be achieved if the same firm is selected for both the programming and the design phases. Any savings that are achieved are expected to flow to the state through reduced fees.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The change modifies the "playing field" for the selection of consultants on state building projects. This may have a limited impact on the

marketing costs of firms seeking contracts with DFCM. Depending on the circumstances of the firm, the minor impact could be positive or negative. The net amount cannot be estimated.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** This rule change was requested by the architectural community and was supported by a committee of architects, engineers, legislators, Building Board members, and state employees who reviewed the division's procurement practices. Many of the design firms have indicated that this change will improve the procurement process for the design of state building construction projects.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ADMINISTRATIVE SERVICES  
 FACILITIES CONSTRUCTION AND MANAGEMENT  
 Room 4110 STATE OFFICE BLDG  
 450 N MAIN ST  
 SALT LAKE CITY UT 84114-1201, or  
 at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

Kenneth Nye at the above address, by phone at 801-538-3284, by FAX at 801-538-3267, or by Internet E-mail at knye@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 02/14/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 02/15/2005

AUTHORIZED BY: Keith Stepan, Director

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#### **R23. Administrative Services, Facilities Construction and Management.**

##### **R23-3. Planning and Programming for Capital Projects.**

##### **R23-3-7. Restrictions of Programming Firm.**

~~[(1) A firm that prepares a program for a project may not be selected as the lead design firm or be a subconsultant to the lead design firm or contractor of that project.~~

~~— (2) The restriction contained in subsection (1) does not apply to:~~

~~— (a) a subconsultant to the firm preparing the program unless the procurement documents for the selection of the programming firm state otherwise;~~

~~— (b) a single selection of a firm to provide both the programming and design services for a project;~~

~~— (c) the selection of a design firm if the scope and cost of the design services are small enough to be procured under the small purchase of architect/engineer services contained in Section R23-2-19;~~

~~— (d) firms entering into contracts for programming services prior to the effective date of this rule in which case the programming firm will be subject to any restrictions contained in the solicitation or contract for those programming services; or~~

—(e) projects where the Director makes a determination that it is in the best interests of the State to waive the requirements of this Section. (1) Except as provided in Subsections 2 and 3, neither a firm that prepares a program for a project nor its subconsultants may be prohibited from being considered for selection as the lead design firm or a member of the design team for that project unless the procurement documents for the selection of the firm for the programming services or the contract with the firm for the programming services contains such a restriction.

(2) In general, a firm that prepares a program for a project that is expected to be developed using the design-build method described in Section R23-1-45 may not be a member of the design-build team for that project. In order for this restriction to take effect, this restriction must be stated in the procurement documents for the selection of the firm for the programming services or the contract with the firm for the programming services. This restriction shall not apply to a subconsultant of the programming firm unless the procurement documents contain such a restriction.

(3) A restriction, as provided for in this Section may be waived if the Director makes a written determination that it is in the best interests of the State to waive this requirement.

**KEY: planning, public buildings, design, procurement**  
~~March 24, 2003~~2005  
 Notice of Continuation July 28, 2004  
 63A-5-103  
 63A-5-211

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## Administrative Services, Facilities Construction and Management **R23-4**

### Suspension/Debarment and Contract Performance Review Committee

#### NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 27610  
FILED: 12/23/2004, 15:18

#### RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: In the 2004 general session, the Legislature passed H.B. 217. This removed provisions in Subsection 63A-5-208(6) relative to a Contract Performance Review Committee and required the Division of Facilities Construction and Management (DFCM) to develop rules for a new dispute resolution process. The rules for the new process are being filed in a separate filing as Rule R23-26. This amendment removes the current provisions for the Contract Performance Review Committee. It also provides for two additional causes for suspension/debarment that were requested by the construction industry during the development of the new dispute resolution process. (DAR NOTES: H.B. 217 is found at UT L 2004 Ch 347, and was effective 05/03/2004. The proposed new rule of R23-26 is under DAR No. 27614 in this issue.)

SUMMARY OF THE RULE OR CHANGE: The changes include: 1) removing the provisions relative to the Contract Performance Review Committee; 2) adding two causes for suspension/debarment: a) a pattern and practice by a state contractor to not properly pay its subcontractors, and b) a pattern and practice by a subcontractor to not honor its bids or proposals; and 3) some minor clarifications of other provisions.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsections 63A-5-208(6), 63A-5-103(1)(e), and 63-56-14(2)

#### ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: The Contract Performance Review Committee was appointed on an ad hoc basis to address individual disputes. The new process will replace this with the use of expert panels which will carry costs that are similar to the Review Committee. The cost of both approaches is not charged to state operating budgets. It is generally shared among the parties to the dispute with the State's share being a cost of the project that has the dispute. The new process is expected to resolve disputes more efficiently which will result in some savings in the projects that do have disputes. The amount of savings will vary and cannot be estimated.
- ❖ LOCAL GOVERNMENTS: This rule does not affect local government. Therefore, there is no anticipated cost or savings to local government.
- ❖ OTHER PERSONS: The Contract Performance Review Committee was appointed on an ad hoc basis to address individual disputes. The new process will replace this with the use of expert panels which will carry costs that are similar to the Review Committee. The cost of both approaches is generally shared among the parties to the dispute. The new process is expected to resolve disputes more efficiently which will result in some savings to persons that do have disputes. The amount of savings will vary and cannot be estimated.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The Contract Performance Review Committee was an Alternative Dispute Resolution (ADR) process that provided an alternative to using litigation to resolve disputes. The new process identified in the proposed Rule R23-26 is also an ADR process. It is a better defined process that is expected to resolve disputes more efficiently than the old process. Both ADR processes are substantially less expensive to persons involved with disputes than the alternative of litigation. The costs and benefits will depend on the individual circumstances of the dispute and cannot be estimated.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The primary purpose of this amendment, in association with the filing of the new Rule R23-26, is to provide a more efficient and effective alternative dispute resolution process that will result in the resolution of disputes in a more timely and cost effective manner. This will provide a positive fiscal impact on businesses that may be party to a dispute with DFCM. The amount of this impact will depend on the individual circumstances of the dispute.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ADMINISTRATIVE SERVICES  
FACILITIES CONSTRUCTION AND MANAGEMENT  
Room 4110 STATE OFFICE BLDG  
450 N MAIN ST  
SALT LAKE CITY UT 84114-1201, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Kenneth Nye at the above address, by phone at 801-538-3284, by FAX at 801-538-3267, or by Internet E-mail at knye@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 02/14/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 02/15/2005

AUTHORIZED BY: Keith Stepan, Director

### **R23. Administrative Services, Facilities Construction and Management.**

#### **R23-4. Suspension/Debarment ~~and Contract Performance Review Committee~~.**

##### **R23-4-1. Purpose and Authority.**

(1) This rule sets forth the ~~requirements regarding the Contract Performance Review Committee as well as~~ the basis and guidelines for suspension or debarment from consideration for award of contracts by the division.

(2) This rule is authorized under ~~Subsection 63A-5-208(6), which allows for the creation of a contract Performance Review Committee,~~ Subsection 63A-5-103(1), which directs the Building Board to make rules necessary for the discharge of the duties of the Division of Facilities Construction and Management, and Subsection 63-56-14(2), which authorizes the Building Board to make rules regarding the procurement of construction, architect-engineering services, and leases.

##### **R23-4-2. Definitions.**

~~(1) "Committee" means a contract performance review committee established pursuant to Subsection 63A-5-208(6).~~

~~(2)(1) "Director" means the director of the division, including, unless otherwise stated, his duly authorized designee.~~

~~(3)(2) "Division" means the Division of Facilities Construction and Management established pursuant to Section 63A-5-201.~~

~~(4)(3) "Person" [means any business, individual, union, committee, other organization, or group of individuals, not including a state agency] shall have the meaning provided in Section 63-56-5.~~

##### **R23-4-3. Suspended and Debarred Persons Not Eligible for Consideration of Award.**

No person who has been suspended or debarred by the division, will be allowed to bid or otherwise solicit work on division contracts until they have successfully completed the suspension or debarment period.

##### **R23-4-4. Causes for Suspension/Debarment and Procedure.**

(1)(a) The causes for debarment and procedures for suspension/debarment are found in Sections 63-56-48 through 63-56-50, as well as Section 63A-5-208(8)~~].~~

(b) Pursuant to subsection 63-56-48(2)(e), a pattern and practice by a state contractor to not properly pay its subcontractors may be determined by the Director to be so serious and compelling as to affect responsibility as a state contractor and therefore may be a cause for debarment.

(c) A pattern and practice by a subcontractor to not honor its bids or proposals may be a cause for debarment.

The procedures for suspension/debarment are as follows:

(a) The director, after consultation with the using agency and the Attorney General, may suspend a person from consideration for award of contracts for a period not to exceed three months if there is probable cause to believe that the person has engaged in any activity which may lead to debarment. If an indictment has been issued for an offense which would be a cause for debarment, the suspension, at the request of the Attorney General, shall remain in effect until after the trial of the suspended person.

(b) The person involved in the suspension and possible debarment shall be given written notice of the division's intention to initiate a debarment proceeding. The using agency and the Attorney General will be consulted by the director and may attend any hearing.

(c) The person involved in the suspension and debarment will be provided the opportunity for a hearing where he may present relevant evidence and testimony. The director may establish a reasonable time limit for the hearing.

(d) The director, following the hearing on suspension and debarment shall promptly issue a written decision, if it is not settled by written agreement.

(e) The written decision shall state the specific reasons for the action taken, inform the person of his right to judicial or administrative review, and shall be mailed or delivered to the suspended or debarred person.

(f) The debarment shall be for a period as set by the Director, but shall not exceed three years.

(g) Notwithstanding any part of this rule, the Director may appoint a person or person(s) to review the issues regarding the suspension or debarment as a recommending authority to the Director.

##### ~~**R23-4-5. Contract Performance Review Committee.**~~

~~The Director may establish a Committee that shall be subject to the following:~~

~~(1) The Committee shall adjudicate complaints about contractor, subcontractor, and supplier performance by following the procedures of of this rule and applicable statute;~~

~~(2) The Committee shall, when appropriate, impose suspensions or debarments from bidding on state building contracts on contractors, subcontractors, and suppliers for cause; and~~

~~(3) The Director may request the Committee to hear other matters, such as any properly filed contract claims against the Division, issues regarding terminations of contracts or defective work, and any other matters that the Director determines will assist the Division in carrying out its responsibilities.~~

~~(4) In regard to (1) and (2) above, the Committee is acting as the chief procurement officer or the head of a purchasing agency for purposes of Section 63-56-48.~~

~~—(5) In regard to (3) above, the Committee is acting as a recommending authority to the Director.~~

~~—(6) The Committee shall consist of three members selected by the Director. At least two of the three members shall have expertise with the type of issues that are likely to appear before the Committee and they shall not be a member of any State Board or part of any state agency. One of the three members may be an employee or officer of a client agency that is not involved with the specific subject matter and person being reviewed.~~

~~—(7) The Committee shall, to the extent permitted by law, compel the attendance of any witnesses or production of documents.~~

~~—(8) The Committee shall meet at such times as designated by the Director.~~

~~—(9) The Committee shall issue all decisions or recommendations in writing with a brief description of the grounds for the decision.~~

~~—(10) Any member of the Committee that has a conflict of interest or appearance of impropriety shall not participate in the matter related thereto, and the director shall appoint a replacement member for the committee. The person being reviewed has a duty to promptly raise any objections regarding conflict of interest or appearance of impropriety and the Committee member may not participate further if the director or the committee determines that the person being reviewed has raised a reasonable and lawful objection.~~

~~—(11) Members of the Committee shall not have any communication with the parties regarding the subject matter to be considered by the Committee unless such communication is within the context of the official proceedings, except as approved in advance by the Committee and where such communication is disclosed in the official proceedings.~~

~~—(12) The Director may adopt policies regarding the Committee that are not inconsistent with this Rule.]~~

**KEY: contracts, construction, construction disputes[<sup>2</sup>]**

**[February 4, 2003]2005**

**Notice of Continuation January 15, 2003**

**63A-5-103 et seq.**

**63-56-5**

**63-56-48**

## Administrative Services, Facilities Construction and Management

### R23-26

#### Dispute Resolution

#### NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 27614

FILED: 12/23/2004, 15:49

#### RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: In its 2004 general session, the Legislature adopted H.B. 217. This directed the Division of Facilities Construction and Management (DFCM) to develop a rule establishing a process for resolving disputes involved with contracts under the division's procurement authority. This legislation identified items to be considered in developing the rule and also

required that the rule be presented to the Government Operations Interim Committee. The proposed rule addresses the items that were identified in H.B. 217 and it was presented to the Government Operations Interim Committee. This committee did not raise any objections or request any changes. (DAR NOTE: H.B. 217 is found at UT L 2004 Ch 347, and was effective 05/03/2004.)

SUMMARY OF THE RULE OR CHANGE: The rule adopts a definitive dispute resolution process for DFCM contracts which replaces a less definitive process that was provided for primarily through contract language. The rule provides for a preliminary resolution effort to facilitate the resolution of disputes at the lowest level possible. It then provides the process for submitting and resolving formal claims along with an appeal process. Time frames are specified for submitting and resolving disputes and circumstances are identified under which the time frames may be extended. The rule also provides a process for subcontractors to submit certain claims directly to the State for resolution. The rule also provides a method for allocating the cost of the dispute resolution process.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsections 63A-5-208(6), 63A-5-103(1)(e), and 63-56-14(2)

#### ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: This dispute resolution process is expected to result in disputes being resolved more timely through a less formal process. Both the process for settling disputes, as well as the amounts involved with settlements are expected to be less than would generally occur under traditional dispute resolution methods such as litigation. The costs and savings associated with resolving disputes are addressed through the budget of the project that has the dispute. The actual fiscal impact of the new process will vary with the specific circumstances of each dispute.

❖ LOCAL GOVERNMENTS: This rule does not affect local government. Therefore, the Division does not anticipate any cost or savings to local government.

❖ OTHER PERSONS: This dispute resolution process is expected to result in disputes being resolved more timely through a less formal process. Both the process for settling disputes, as well as the amounts involved with settlements are expected to be less than would generally occur under traditional dispute resolution methods such as litigation.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The compliance costs for contractors to submit and resolve disputes will vary depending on the nature and circumstances of the specific dispute. The rule requires that an initial attempt at resolution be made on an informal basis before a formal claim may be filed. If this is not successful, the contractor must pay a \$1,500 filing fee when the formal claim is submitted. This becomes part of the costs of resolving the dispute that are then apportioned based on the ultimate determination of responsibility. The rule allows the parties to agree on a different method of allocating costs. This process is expected to substantially reduce the likelihood that a dispute would need to go to litigation in court in order to be resolved. The

less formal processes are expected to be significantly less costly to contractors than litigation.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The dispute resolution process outlined in this rule is the product of a collaborative effort by DFCM and representatives of contractors, subcontractors, architects, and the State Building Board. The proposed process provides a less costly method for businesses to resolve disputes with DFCM. Overall, the rule is expected to have a positive fiscal impact on businesses that contract with DFCM.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ADMINISTRATIVE SERVICES  
FACILITIES CONSTRUCTION AND MANAGEMENT  
Room 4110 STATE OFFICE BLDG  
450 N MAIN ST  
SALT LAKE CITY UT 84114-1201, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Kenneth Nye at the above address, by phone at 801-538-3284, by FAX at 801-538-3267, or by Internet E-mail at knye@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 02/14/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 02/15/2005

AUTHORIZED BY: Keith Stepan, Director

## **R23. Administrative Services, Facilities Construction and Management.**

### **R23-26. Dispute Resolution.**

#### **R23-26-1. Purpose and Scope.**

(1) The purpose of this rule is to establish a process for resolving disputes involved with contracts under the Division's procurement authority. The objectives of the procedure are to:

(a) encourage the payment of the appropriate and fair amount on a timely basis for work or services performed;

(b) encourage the resolution of issues on an informal basis in order to minimize Disputes and Claims;

(c) encourage fair and timely settlement of Claims;

(d) provide a process that is as simple as possible and minimizes the costs to all parties in achieving a resolution;

(e) maintain effective contractual relationships and responsibilities;

(f) when possible, resolve related issues and responsibilities as a package;

(g) discourage bad faith, frivolous or excessive Claims;

(h) avoid having Claims interfere with the progress of the work;

(i) assure that the presentation of good faith and non-frivolous issues and Claims do not negatively affect selection processes for future work, while bad faith and frivolous issues, as well as the

failure of a Contractor or Subcontractor to facilitate resolution of issues, may be considered in the evaluation of the Contractor or Subcontractor; and

(j) provide a process where Subcontractors at any tier, which have a Claim that involves a good faith issue related to the responsibility of the Division or anyone for whom the Division is liable, has the ability to present the matter for resolution in a fair and timely manner to those of any higher tier and ultimately to the Division without creating any contractual relationship between the Division and the Subcontractor at any tier.

(2) This rule does not apply to any protest under Section 63-56-45.

(3) A Claim under this rule that does not include a monetary claim against the Division or its agents is not limited to the dispute resolution process provided for in this rule.

(4) Persons pursuing Claims under the process required by this rule:

(a) are bound by the decision reached under the process unless the decision is properly appealed; and

(b) may not pursue a Claim under the dispute resolution process established in Sections 63-56-49 through 63-56-58.

(5) This rule does not apply to tort or other claims subject to the provisions of the Utah Governmental Immunity Act.

(6) This rule shall not limit the right of the Division to have any of its issues, disputes or claims considered in accordance with the applicable contract or law.

#### **R23-26-2. Authority.**

(1) The rule is authorized pursuant to Subsection 63a-5-208(6) and under the authority of the Utah State Building Board, Section 63A-5-101 and the Department of Administrative Services, Division of Facilities Construction and Management, Section 63A-5-201 et seq.

#### **R23-26-3. Definitions.**

For purposes of this rule:

(1) "Claim" means a dispute, demand, assertion or other matter submitted by a Contractor that has a contract under the procurement authority of the Division, including Subcontractors as provided for in this rule. The claimant may seek, as a matter of right, modification, adjustment or interpretation of contract terms, payment of money, extension of time or other relief with respect to the terms of the contract. A request for Preliminary Resolution Effort (PRE) shall not be considered a "Claim." A requested amendment, requested change order, or a Construction Change Directive (CCD) is not a PRE or Claim unless agreement cannot be reached and the procedures of this rule are followed.

(2) "Contractor" means a person or entity under direct contract with the Division and under the Division's procurement authority.

(3) "DFCM representative" means the Division person directly assigned to work with the Contractor on a regular basis.

(4) "Director" means the director of the Division, including unless otherwise stated, his/her duly authorized designee.

(5) "Division" means the Division of Facilities Construction and Management established pursuant to Section 63A-5-201 et seq. It may also be referred in this rule as "DFCM."

(6) "Executive Director" means the Executive Director of the Department of Administrative Services, including unless otherwise stated, his/her duly authorized designee.

(7) "Preliminary Resolution Effort" or "PRE" means the processing of a request for preliminary resolution or any similar

notice about a problem that could potentially lead to a Claim and is prior to reaching the status of a Claim.

(8) "Resolution of the claim" means the final resolution of the claim by the Director, but does not include any administrative appeal, judicial review or judicial appeal thereafter.

(9) "Subcontractor" means any subcontractor or subconsultant at any tier under the Contractor, including any trade contractor, specialty contractor or consultant but does not include suppliers who provide only materials, equipment or supplies to a contractor, subcontractor or subconsultant. "Subcontractor" does not include any person or entity, at any tier, under contract with a Lessor.

#### **R23-26-4. Procedure for Preliminary Resolution Efforts.**

(1) Request for Preliminary Resolution Effort (PRE). A Contractor raising an issue related to a breach of contract or an issue concerning time or money shall file a PRE as a prerequisite for any consideration of the issue by the Division.

(2) Time for Filing. The PRE must be filed in writing with the DFCM representative within twenty-one (21) days after the Contractor knew or should have known of an event for initiating a PRE, as defined in the applicable contract. If the Division's contract does not define the event, the event shall be defined as the time at which the issue cannot be resolved through the normal business practices associated with the contract. The labeling of the notice shall not preclude the consideration of the issue by the Division. A shorter notice provision may be designated in the contract where damages can be mitigated such as delays or concealed or unknown conditions, the discovery of hazardous materials, emergency conditions, or historical or archeological discoveries.

(3) Content Requirement. The PRE shall be required to include in writing to the extent information is reasonably available at the time of such filing:

(a) a description of the issue;  
(b) the potential impact on cost and time or other breach of contract; and

(c) an indication of the relief sought.

(4) Supplementation. Additional detail of the content requirement above shall be provided later if the detail is not yet available at the initial filing as follows:

(a) While the issue is continuing or the impact is being determined, the Contractor shall provide a written updated status report every 30 days or as otherwise reasonably requested by the DFCM Representative; and

(b) After the scope of work or other factors addressing the issue are completed, the complete information, including any impacts on time, cost or other relief requested, must be provided to the DFCM Representative within twenty-one (21) days of such completion.

(5) Subcontractors.

(a) Under no circumstances shall any provision of this rule be intended or construed to create any contractual relationship between the Division and any Subcontractor.

(b) The Contractor must include the provisions of this subsection (5) in its contract with the first tier Subcontractor, and each Subcontractor must do likewise. At the Contractor's discretion, the Contractor may allow a Subcontractor at the 2nd tier and beyond to submit the PRE directly with the Contractor.

(c) In order for a Subcontractor at any tier to be involved with the preliminary resolution process of the Division, the following conditions and process shall apply:

(i) The Subcontractor must have attempted to resolve the issue with the Contractor including the submission of a PRE with the Contractor;

(ii) The Subcontractor must file a copy of the PRE with the DFCM Representative;

(iii) The PRE to the Contractor must meet the time, content and supplementation requirements of Section R23-26-4. The triggering event for a Subcontractor to file a PRE shall be the time at which the issue cannot be resolved through the normal business practices associated with the contract, excluding arbitration and litigation;

(iv) The PRE submitted to the Contractor shall only be eligible for consideration in the Division's PRE process to the extent the issue is reasonably related to the performance of the Division or an entity for which the Division is liable;

(v) The Contractor shall resolve the PRE to the satisfaction of the Subcontractor within sixty (60) days of its submittal to the Contractor or such other time period as subsequently agreed to by the Subcontractor in writing. If the Contractor fails to resolve the PRE with the Subcontractor within such required time period, the Subcontractor may submit in writing the PRE with the Contractor and the Division. In order to be eligible for Division consideration of the PRE, the Subcontractor must submit the PRE within twenty-one (21) days of the expiration of the time period for the Contractor/Subcontractor PRE process. The Division shall consider the PRE as being submitted by the Contractor on behalf of the Subcontractor.

(vi) Upon such PRE being submitted, the Contractor shall cooperate with the DFCM Representative in reviewing the issue.

(vii) The Division shall not be obligated to consider any submission which is not in accordance with this rule.

(viii) The Subcontractor may accompany the Contractor in participating with the Division regarding the PRE raised by the Subcontractor. The Division is not precluded from meeting with the Contractor separately and it shall be the responsibility of the Contractor to keep the Subcontractor informed of any such meetings.

(ix) Notwithstanding any provision of this rule, a Subcontractor shall be entitled to pursue a payment bond claim.

(6) PRE Resolution Procedure. The DFCM Representative may request additional information and may meet with the parties involved with the issue.

(7) Contractor Required to Continue Performance. Pending the final resolution of the issue, unless otherwise agreed upon in writing by the DFCM Representative, the Contractor shall proceed diligently with performance of the contract and the Division shall continue to make payments in accordance with the contract.

(8) Decision. The Division shall issue to the Contractor, and any other party brought into the process by the DFCM Representative as being liable to the Division, a written decision providing the basis for the decision on the issues presented by all of the parties within thirty (30) days of receipt of all the information required under Subsection R23-26-4 (5)(b) above.

(9) Decision Final Unless Claim Submitted. The decision by the Division shall be final, and not subject to any further administrative or judicial review (not including judicial enforcement) unless a Claim is submitted in accordance with this rule.

(10) Extension Requires Mutual Agreement. Any time period specified in this rule may be extended by mutual agreement of the Contractor and the Division.

(11) If Decision Not Issued. If the decision is not issued within the thirty (30) day period, including any agreed to extensions, the issue may be pursued as a Claim.

(12) Payment for Performance. Except as provided in this rule, any final decision where the Division is to pay additional monies to the Contractor, shall not be delayed by any PRE. Claim or appeal by another party. Payment to the Contractor of any final decision shall be made by the Division in accordance with the contract for the completed work. Notwithstanding any other provision of this rule, payment to the Contractor shall be subject to any set-off, claims or counterclaims of the Division. Payment to the Contractor for a Subcontractor issue submitted by the Contractor shall be paid by the Contractor to the Subcontractor in accordance with the contract between the Contractor and the Subcontractor. Any payment or performance determined owing by the Contractor to the Division shall be made in accordance with the contract.

### **R23-26-5. Resolution of Claim.**

(1) Claim. If the decision on the PRE is not issued within the required timeframe or if the Contractor is not satisfied with the decision, the Contractor or other party brought into the process by the Division, may submit a Claim in accordance with this rule as a prerequisite for any further consideration by the Division or the right to any judicial review of the issue giving rise to the claim.

(2) Subcontractors. In order for a Subcontractor to have its issue considered in the Claim process by the Division, the Subcontractor that had its issue considered under Section 23-26-4(6) may submit the issue as a Claim by filing it with the Contractor and the Division within the same timeframe and with the same content requirements as required of a Claim submitted by the Contractor under this rule. The Division shall consider the Claim as being submitted by the Contractor on behalf of the Subcontractor. Under no circumstances shall any provision of this rule be intended or construed so as to create any contractual relationship between the Division and any Subcontractor.

(a) Upon such Claim being submitted, the Contractor shall fully cooperate with the Director, the person(s) evaluating the claim and any subsequent reviewing authority.

(b) The Director shall not be obligated to consider any submission which is not in accordance with this rule.

(c) The Subcontractor may accompany the Contractor in participating with the Director, the person(s) evaluating the Claim and any subsequent reviewing authority regarding the Claim. The Director, the person(s) evaluating the Claim and any subsequent reviewing authority is not precluded from meeting with the Contractor separately, and it shall be the responsibility of the Contractor to keep the Subcontractor informed of any such meetings and matters discussed.

(d) Notwithstanding any provision of this rule, a Subcontractor shall be entitled to pursue a payment bond claim.

(3) Time for Filing. The Claim must be filed in writing promptly with the Director, but in no case more than twenty-one(21) days after the decision is issued on the PRE under Subsection 23-26-4(8) above or no more than twenty-one (21) days after the decision is not issued under Subsection 23-26-4(11) above, whichever is later.

(4) Content Requirement. The written Claim shall include:

(a) a description of the issues in dispute;  
(b) the basis for the Claim, including documentation and analysis required by the contract and applicable law and rules that allow for the proper determination of the Claim;

(c) a detailed cost estimate for any amount sought, including copies of any related invoices; and

(d) a specific identification of the relief sought.

(5) Extension of Time to Submit Documentation. The time period for submitting documentation and any analysis to support a Claim may be extended by the Director upon written request of the claimant showing just cause for such extension, which request must be included in the initial Claim submittal.

(6) Contractor Required to Continue Performance. Pending the final determination of the Claim, including any judicial review or appeal process, and unless otherwise agreed upon in writing by the Director, the Contractor shall proceed diligently with performance of the Contract and the Division shall continue to make payments in accordance with the contract.

(7) Agreement of Claimant on Method and Person(s) Evaluating the Claim. The Director shall first attempt to reach agreement with the claimant on the method and person(s) to evaluate the Claim. If such agreement cannot be made within fourteen (14) days of filing of the Claim, the Director shall select the method and person(s), considering the purpose of this rule as stated in Section R23-26-1. Unless agreed to by the Director and the claimant, any selected person shall not have a conflict of interest or appearance of impropriety. Any party and the person(s) evaluating the Claim has a duty to promptly raise any circumstances regarding a conflict of interest or appearance of impropriety. If such a reasonable objection is raised, and unless otherwise agreed to by the Director and the claimant, the Director shall take appropriate action to eliminate the conflict of interest or appearance of impropriety. The dispute resolution methods and person(s) may include any of the following:

(a) A single expert and/or hearing officer qualified in the field that is the subject of the Claim;

(b) An expert panel, consisting of members that are qualified in a field that is the subject of the Claim;

(c) An arbitration process which may be binding if agreed to by the parties to the Claim;

(d) A mediator; or

(e) Any other method that best accomplishes the purpose of Section R23-26-1.

(8) Evaluation Process.

(a) No Formal Rules of Evidence. There shall be no formal rules of evidence but the person(s) evaluating the Claim shall consider the relevancy, weight and credibility of the evidence.

(b) Questions. Parties and the person(s) evaluating the Claim have the right to ask questions of each other.

(c) Investigation and Documents. The person(s) evaluating the Claim has the right to investigate and request documents, consider any claims or counterclaims of the Division, may set deadlines for producing documents, and may meet with the parties involved with the Claim together or separately as needed. Copies of submitted documents shall be provided to all parties.

(d) Failure to Cooperate. The failure of a party to cooperate with the investigation or provide requested documentation may be a consideration by the person(s) evaluating the Claim in reaching the findings in its report.

(e) Record of the Proceeding. The person(s) evaluating the Claim shall determine the extent to which formal minutes, transcripts, and/or recordings shall be made of the meetings and/or hearings and shall make copies available to all parties.

(f) Certification. The person(s) evaluating the Claim may require the certification of documents provided.

(9) Timeframe for Person(s) Evaluation the Claim and Director's Determination. The Claim shall be resolved no later than sixty (60) days after the proper filing of the Claim, which includes any extension of time approved under Section R23-26-5(5). The person(s) evaluating the Claim may extend the time period for resolution of the Claim by not to exceed sixty (60) additional days for good cause. The time period may also be extended if the claimant agrees. The person(s) evaluating the Claim shall issue to the parties a schedule providing the timeframe for the issuance of the following:

(a) a Preliminary Resolution Report including the preliminary findings regarding the Claim;

(b) the receipt of written comments concerning the preliminary report. A copy of such comments must be delivered to the other parties to the Claim within the same timeframe;

(c) a reply to written comments, which must also be delivered to the other parties to the Claim within the same timeframe; and

(d) a final report and recommendation which must be delivered to the Director and the other parties no later than seven (7) days prior to the expiration of the required timeframe for resolution of the Claim.

(10) Director's Final Resolution. The Director shall consider the final recommendation and report and issue the final resolution of the Claim, with any modifications, prior to the expiration of the required timeframe for resolution of the Claim.

**R23-26-6. Administrative Appeal to the Executive Director of the Department of Administrative Services.**

(1) Administrative Appeal. The Contractor may file a written administrative appeal of the final resolution of the person(s) evaluating the Claim with the Executive Director of the Department of Administrative Services. The administrative appeal is the prerequisite for any further consideration by the State of Utah, or to judicial review of the issue giving rise to the Claim. It shall be considered that the Contractor, or another party brought into the process by the Division, has not exhausted its administrative remedies if such an administrative appeal is not undertaken.

(2) Time for Filing. The administrative appeal must be filed in writing promptly with the Executive Director and delivered to the other parties to the Claim, but in no case more than fourteen (14) days after the Contractor's receipt of the Director's final resolution of the Claim.

(3) Content. The Administrative Appeal must state the basis for the appeal.

(4) Response. Within five (5) days of receipt of the Administrative Appeal, any party may deliver to Executive Director written comments concerning the appeal. A copy of such comments must be delivered to the other parties to the Claim within the same five (5) day time period.

(5) Reply to Written Comments. Within five (5) days of receipt of written comments, any party may deliver to the Executive Director a reply to the written comments concerning the appeal. A copy of such reply must be delivered to the other parties to the Claim within the same five (5) day time period.

(6) Executive Director's Decision. Within thirty (30) days of receipt of the Administrative Appeal, and after considering the appeal, the Director's final resolution, responses and replies, the Executive Director or his/her designee shall issue a final decision of the appeal in writing and shall state the basis of the decision. Failure of the Executive Director to issue a written decision within the thirty (30) day time period, shall entitle the appellant to seek judicial

review of the Claim. The time period for the Executive Director's decision may be extended by agreement of the Executive Director and the Appellant.

**R23-26-7. Payment of Claim.**

(1) When a stand alone component of a Claim has received a final determination, and is no longer subject to review or appeal, that amount shall be paid in accordance with the payment provisions of the contract or judicial order.

(2) When the entire Claim has received a final determination, and is no longer subject to review or appeal, the full amount shall be paid within fourteen (14) days of the date of the final determination unless the work or services has not been completed, in which case the amount shall be paid in accordance with the payment provisions of the contract to the point that the work or services is completed.

(3) The final determination date is the earlier of the date upon which the claimant accepted the settlement in writing with an executed customary release document and waived its rights of appeal, or the expiration of the appeal period.

(4) Any final determination where the Division is to pay additional monies to the Contractor shall not be delayed by any appeal or request for judicial review by another party brought into the process by the Division as being liable to the Division.

(5) Notwithstanding any other provision of this rule, payment of all or part of a Claim is subject to any set-off, claims or counterclaims of the Division.

(6) Payment to the Contractor for a Subcontractor issue (Claim) deemed filed by the Contractor, shall be paid by the Contractor to the Subcontractor in accordance with the contract between the Contractor and the Subcontractor.

(7) The execution of a customary release document related to any payment may be required as a condition of making the payment.

**R23-26-8. Judicial Review.**

(1) The Executive Director's decision on the appeal, or the failure to provide a decision within the required time period under Subsection R23-26-6(6), shall be deemed a final agency action subject to judicial review as provided in Sections 63-46b-14 and 63-46b-15, including, but not limited to requirements for exhaustion of administrative remedies, the requirements for a petition of judicial review, jurisdiction and trial de novo.

(2) The participation of a person in the claim evaluation process does not preclude the person from testifying in a judicial proceeding to the extent allowed by Utah law.

**R23-26-9. Allocation of Costs of Claim Resolution Process.**

(1) In order to file a Claim, a claimant must pay a \$1500 filing fee to the Division. When the Claim is a pass-through from a Subcontractor in accordance with Subsection R23-26-4(5), the payment of the fee shall be made by the Subcontractor.

(2) Unless otherwise agreed to by the parties to the Claim, the costs of resolving the Claim shall be allocated among the parties on the same proportionate basis as the determination of financial responsibility for the Claim.

(3) The costs of resolving the Claim that are subject to allocation include the claimant's filing fee, the costs of any person(s) evaluating the Claim, the costs of making any required record of the process, and any additional testing or inspection procured to investigate and/or evaluate the Claim.

(4) Each party is responsible for its own attorney fees.

**R23-26-10. Alternative Procedures.**

To the extent otherwise permitted by law, if all parties to a Claim agree in writing, a protocol for resolving a Claim may be used that differs from the process described in this rule.

**R23-26-11. Impact on Future Selections.**

(1) The presentation of a good faith and non-frivolous issue or Claim shall not be considered by the Division's selection process for a future award of contract; and

(2) The submission of a bad faith and frivolous issue or Claim or the failure by a Contractor to facilitate resolution of a Claim, may be considered in the Division's evaluation of performance.

**R23-26-12. Delegated Projects.**

Projects delegated by the Division shall provide for contract provisions which provide a similar dispute resolution process as provided for in this rule.

**R23-26-13. Report to Building Board.**

The Division may report on the status of claims to the Utah State Building Board.

**KEY: resolution, settlement, dispute 2005****63A-5-208(6)****63A-5-103(1)(e)****63-56-14(2)**

▼ ————— ▼

**Administrative Services, Records  
Committee  
R35-1a  
State Records Committee Definitions**

**NOTICE OF PROPOSED RULE**

(New Rule)

DAR FILE NO.: 27621

FILED: 12/29/2004, 14:39

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: After a five-year review, the Committee decided it was best to have all definitions in one place and to create a new rule for the definitions.

SUMMARY OF THE RULE OR CHANGE: Currently, the definitions for the State Records Committee administrative rules are scattered throughout each rule. The Committee would like to consolidate the definitions into one new rule, Rule R35-1a. They also want to add a definition to explain a denial.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 63-2-502(2)(a)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: Since this is a change in the location of the definitions and an addition of a definition, there is no fiscal impact to the state budget.

❖ LOCAL GOVERNMENTS: Since this is a change in the location of the definitions and an addition of a definition, there is no fiscal impact to the local government.

❖ OTHER PERSONS: Since this is a change in the location of the definitions and an addition of a definition, there is no fiscal impact to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Since this is a change in the location of the definitions and an addition of a definition, there is no fiscal impact.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule is intended to make the definitions easier to access and does not create any fiscal impact on businesses. Camille Anthony, Executive Director

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ADMINISTRATIVE SERVICES  
RECORDS COMMITTEE  
ARCHIVES BUILDING  
SALT LAKE CITY UT 84114, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Janell Tuttle at the above address, by phone at 801-538-3052, by FAX at 801-538-3354, or by Internet E-mail at jtuttle@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 02/14/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 02/15/2005

AUTHORIZED BY: Patricia Smith-Mansfield, Director

**R35. Administrative Services, Records Committee.****R35-1a. State Records Committee Definitions.****R35-1a-1. Definitions.**

In addition to terms defined in Section 63-2-102, Section 63-2-103, Utah Code, and in Rule Section R35-2-2 of the Utah Administrative Code, the following terms apply to this rule:

(a) "Committee" means the State Records Committee in accordance with Section 63-2-501, Utah Code.

(b) "Denial" means an act taken to restrict access to a government record in accordance with Section 63-2-205 and Subsection 63-2-403(4), Utah Code.

(c) "Executive Secretary" means the individual appointed annually as required in Subsection 63-2-502(3), Utah Code.

(d) "Expedited Hearing" means a meeting by the Committee to review a designation of records by a government entity in a shorter time period than in accordance with Subsection 63-2-403(4)(a).

(e) "Hearing" means a meeting by the committee to hear an appeal of a records decision by a government entity in accordance with Section 63-2-403, Utah Code.

(f) "Order" means the Decision and Order issued by the State Records Committee as provided by Subsection 63-2-403(11), Utah Code.

(g) "Prehearing" means a meeting by one or more members of the State Records committee to explore issues and facilitate settlement of a records dispute involving a government entity prior to the completion of efforts to resolve such disputes through an official appeals process.

(h) "Subpoena" means a written order requiring appearance before the State Records Committee to give testimony in accordance with Section 63-2-403, Utah Code.

**KEY: state records committee, records appeal hearings, government documents**

**2005**

**63-2-502(2)(a)**



## Administrative Services, Records Committee

### R35-2

### Declining Appeal Hearings

#### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 27625

FILED: 12/29/2004, 14:52

#### RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: After conducting a five-year review, the State Records Committee determined that amendments were required.

SUMMARY OF THE RULE OR CHANGE: The Committee proposed the following amendments to the rule: 1) in Section R35-2-1, changed the wording to be more consistent with the title of the rule; 2) the definitions in Section R35-2-2 will be moved to the newly created Rule R35-1a; 3) Section R35-2-3 will be renumbered to Section R35-2-2; and 4) the new Section R35-2-2 will include the procedures for dealing with the claim that a record does not exist and clarifies what must be submitted for an appeal before the Committee. (DAR NOTE: The proposed new rule of R35-1a is under DAR No. 27621 in this issue.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 63-2-403(4)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There will be a cost savings of \$87 in staff time per appeal that involves a record which the governmental entity claims does not exist. There will also be a savings in the time the governmental entity would have spent in preparation and attendance of a hearing.

❖ LOCAL GOVERNMENTS: There will be a savings in the time the local governmental entity would have spent in preparation and attendance of a hearing before the State Records Committee.

❖ OTHER PERSONS: There is a possible cost of attorney fees if the appellant decides to pursue the records issue in district court.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Since the appeal for records that the governmental entity claims do not exist would not come before the Committee, there is no cost impact for compliance with the Committee's order.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule change contains amendments to save time and money on a government level, but no fiscal impact on businesses is foreseen. Camille Anthony, Executive Director

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ADMINISTRATIVE SERVICES  
RECORDS COMMITTEE  
ARCHIVES BUILDING  
SALT LAKE CITY UT 84114, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Janel Tuttle at the above address, by phone at 801-538-3052, by FAX at 801-538-3354, or by Internet E-mail at jtuttle@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 02/14/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 02/15/2005

AUTHORIZED BY: Patricia Smith-Mansfield, Director

#### **R35. Administrative Services, Records Committee.**

##### **R35-2. Declining Appeal Hearings.**

##### **R35-2-1. Authority and Purpose.**

In accordance with Section 63-2-502 and Subsection 63-2-403(4), Utah Code, this rule establishes the procedure ~~for denial of claims~~ declining to schedule hearings by the ~~[e]Executive~~ [s]Secretary of the Records Committee.

##### ~~[R35-2-2. Definitions.~~

~~— In addition to terms defined in Section 63-2-102, Utah Code, the following apply to this rule:~~

~~— (a) "Executive Secretary" means the individual appointed annually as required in Subsection 63-2-502(3), Utah Code.~~

~~— (b) "Committee" means the State Records Committee in accordance with Section 63-2-501, Utah Code.~~

~~— (c) "Hearing" means a meeting by the committee to hear an appeal of a records decision by a government entity in accordance with Section 63-2-403, Utah Code.~~

]

##### **R35-2-~~3~~2. Declining Requests for Hearings.**

(a) In order to decline a request for a hearing under Subsection 63-2-403(4), the Executive Secretary shall consult with the chair of the Committee and at least one other member of the Committee as selected by the chair.

~~[(b)]~~ The Executive Secretary shall organize and disseminate all relevant information and documents to members of the entire committee, including a copy of the appeal and the previous order of the Committee holding the records series at issue appropriately classified. ~~[(b)]~~ The claim that a record does not exist does not constitute a denial unless the petitioner can provide sufficient evidence in his or her statement of facts, reasons, and legal authority in support of appeal that record did exist at one time. A determination that sufficient facts have or have not been alleged shall be made by the chair of the Committee. In the circumstance that sufficient facts have not been alleged, the Executive Secretary shall be instructed not to schedule an appeal hearing, and shall inform the petitioner appropriately.

~~(c)~~ In order to file an appeal the petitioner must submit a copy of their initial records requests, as well as any denial of the records request. The Executive Secretary shall notify the petitioner that a hearing cannot be scheduled until the proper information is submitted.

~~[(e)]~~~~(d)~~ The ~~[two members]~~ chair of the Committee and one other member of the Committee must both agree with the Executive Secretary's recommendation to decline to schedule a hearing. Such a decision shall consider the potential for a public interest claim as may be put forward by the petitioner under the provisions of Subsection 63-2-402(11)(b), Utah Code. A copy of each decision to deny a hearing shall be signed and retained in the file.

~~[(d)]~~~~(c)~~ The Executive Secretary's notice to the petitioner indicating that the request for hearing has been denied, as provided for in Subsection 63-2-403(4)(ii), Utah Code, shall include a copy of the previous order of the Committee holding the records series at issue appropriately classified.

~~(e)~~ The Executive Secretary shall notify the members of the entire Committee each time an appeal hearing is denied. Such notices shall include a copy of the petitioner's appeal and the previous order of the Committee holding the records series at issue appropriately classified. Any Committee member may request that a discussion of the Executive Secretary's decision be placed on the agenda for the next regularly scheduled Committee meeting.

(f) The Executive Secretary shall report on each of the hearings declined at each regularly scheduled meeting of the Committee in order to provide a public record of the actions taken.

(g) If a Committee member has requested a discussion to reconsider the decisions to decline a hearing, the Committee may, after discussion and by a majority vote, choose to reverse the decision of the Executive Secretary and hold a hearing. Any discussion of reconsideration shall be limited to those Committee members then present, and shall be based only on two questions: (1) whether the records being requested were covered by a previous order of the Committee, and/or (2) whether the petitioner has, or is likely to, put forth a public interest claim. Neither the petitioner nor the agency whose records are requested shall be heard at this time. If the Committee votes to hold a hearing, the Executive Secretary shall schedule it on the agenda of the next regularly scheduled Committee meeting.

(h) The Executive Secretary shall compile and include in an annual report to the Committee a complete documented list of all hearings held and all hearings declined.

**KEY: government documents, state records committee, records appeal hearings**  
**[July 16, 1999]2005**  
**Notice of Continuation July 2, 2004**  
**63-2-403(4)**

## Administrative Services, Records Committee **R35-3** Prehearing Conferences

### NOTICE OF PROPOSED RULE (Amendment)

DAR FILE No.: 27622  
FILED: 12/29/2004, 14:40

#### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** After a five-year review, the State Records Committee decided to make amendments to this rule.

**SUMMARY OF THE RULE OR CHANGE:** Section R35-3-2 that deals with definitions will be removed and placed with the definitions in the newly created rule R35-1a. Section R35-3-3 will be renumbered to R35-3-2. (DAR NOTE: The proposed new rule of R35-1a is under DAR No. 27621 in this issue.)

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Subsection 63-2-502(2)(a)

#### ANTICIPATED COST OR SAVINGS TO:

- ❖ **THE STATE BUDGET:** There is no cost impact to the state budget since this is a change only in the location of the definitions.
- ❖ **LOCAL GOVERNMENTS:** There is no cost impact to local government since this is a change only in the location of the definitions.
- ❖ **OTHER PERSONS:** There is no cost impact to other persons since this is a change only in the location of the definitions.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There is no cost impact since this is a change only in the location of the definitions.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** This rule change allows for easier access to the definitions and does not create any fiscal impact on businesses. Camille Anthony, Executive Director

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ADMINISTRATIVE SERVICES  
RECORDS COMMITTEE  
ARCHIVES BUILDING  
SALT LAKE CITY UT 84114, or  
at the Division of Administrative Rules.

## DIRECT QUESTIONS REGARDING THIS RULE TO:

Janell Tuttle at the above address, by phone at 801-538-3052, by FAX at 801-538-3354, or by Internet E-mail at jtuttle@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 02/14/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 02/15/2005

AUTHORIZED BY: Patricia Smith-Mansfield, Director

**R35. Administrative Services, Records Committee.****R35-3. Prehearing Conferences.****R35-3-1. Authority and Purpose.**

In accordance with the general objectives of the Government Records Access and Management Act in facilitating access to records, and in keeping with the objectives of hearing procedures found in Section 63-2-403[-], Utah Code, to resolve disputes, this rule authorizes and establishes the procedure for holding prehearing conferences.

**[R35-3-2. Definitions.**

~~— In addition to terms defined in Section 63-2-103, Utah Code, and in rule Section R35-2-2 of the Utah Administrative Code, the following terms apply:~~

~~— (a) "Prehearing" means a meeting by one or more members of the State Records committee to explore issues and facilitate settlement of a records dispute involving a government entity prior to the completion of efforts to resolve such disputes through an official appeals process.~~

]

**R35-3-[3]2. Scheduling Prehearing Conferences.**

(a) In the process of planning and organizing efforts to execute appeals which are filed pursuant to Section 63-2-403, the chair of the state records committee, at his or her discretion, may direct the disputing parties to appear before him or her, in person or telephonically, for a prehearing conference, to be held before any official appeals hearing, for such purposes as:

(1) encouraging exploration of areas of agreement, including stipulations; or

(2) facilitating settlement of the appeal.

(b) In the event that the issue, or issues scheduled for an appeals hearing are resolved at a prehearing conference, the committee chair shall report the settlement to the entire records committee at the next scheduled meeting for the purposes of creating a public record. Any stipulations shall be written and presented to the members of the records committee at the hearing.

**KEY: government documents, state records committee, records appeal hearings**

**[July 16, 1999]2005**

**Notice of Continuation July 2, 2004**

**63-2-502(2)(a)**

## Administrative Services, Records Committee

### R35-4

## Compliance with State Records Committee Decisions and Orders

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 27624

FILED: 12/29/2004, 14:45

### RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: After a five-year review, the Committee decided to make an amendment.

SUMMARY OF THE RULE OR CHANGE: The definitions under Section R35-4-2 will be moved to the newly created Rule R35-1a and Section R35-4-3 will be renumbered to Section R35-4-2. (DAR NOTE: The proposed new rule of R35-1a is under DAR No. 27621 in this issue.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 63-2-502(2)(a)

### ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There is no cost impact to the state budget since this is a change only in the location of the definitions.

❖ LOCAL GOVERNMENTS: There is no cost impact to local government since this is a change only in the location of the definitions.

❖ OTHER PERSONS: There is no cost impact to other persons since this is a change only in the location of the definitions.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no cost impact since this is a change only in the location of the definitions.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule change allows for easier access to the definitions and does not create any fiscal impact on businesses. Camille Anthony, Executive Director

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ADMINISTRATIVE SERVICES  
RECORDS COMMITTEE  
ARCHIVES BUILDING  
SALT LAKE CITY UT 84114, or  
at the Division of Administrative Rules.

### DIRECT QUESTIONS REGARDING THIS RULE TO:

Janell Tuttle at the above address, by phone at 801-538-3052, by FAX at 801-538-3354, or by Internet E-mail at jtuttle@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 02/14/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 02/15/2005

AUTHORIZED BY: Patricia Smith-Mansfield, Director

**R35. Administrative Services, Records Committee.**

**R35-4. Compliance with State Records Committee Decisions and Orders.**

**R35-4-1. Authority and Purpose.**

In accordance with Subsection 63-2-403(14) Utah Code, this rule intends to establish the procedure for complying with an order of the Records Committee.

**~~R35-4-2. Definitions.~~**

~~In addition to terms defined in Section 63-2-102, Utah Code, and in rule R35-2-2 of the Utah Administrative Code, the following apply to this rule:~~

~~(a) "Order" means the Decision and Order issued by the State Records Committee in accordance with Subsection 63-2-403(11), Utah Code.~~

]

**R35-4-~~3~~2. Notices of Compliance.**

(a) The executive secretary of the state records committee shall send an order of the state records committee by certified mail to the governmental entity ordered to produce records.

(b) Pursuant to Subsection 63-2-403(14), Utah Code, each governmental entity ordered to produce records by the records committee, shall file with the state records committee either a notice of compliance, or a copy of the appellant's notice of appeal of the records committee order, no later than the thirtieth day following the date of the state records committee order.

(c) The notice of compliance shall contain a statement, signed by the head of the governmental entity, that the records ordered to be produced have been delivered to the petitioner, and the method and date of delivery.

(d) In the event a governmental entity fails to file a notice of compliance or a copy of the appellants notice of appeal of the records committee order within the time frame specified, the state records committee shall send written notice of the entity's noncompliance to the governor for executive branch agencies, to the Legislative Management Committee for legislative branch entities, to the Judicial Council for judicial branch entities, and to the mayor or chief executive officer of a local government for local or regional governmental entities.

(e) The state records committee may also impose a civil penalty of up to \$500 for each day of continuing noncompliance, but only after holding a discussion of the matter at issue, and obtaining a majority vote at a regularly scheduled committee meeting. The non-complying governmental entity shall be heard at that meeting, with discussion being limited specifically to reasons for the neglectful, willful, or intentional act. Any civil penalty imposed shall be retroactive to the first date of noncompliance.

**KEY: government documents, state records committee, records appeal hearings**

~~July 16, 1999~~**2005**

**Notice of Continuation July 2, 2004**

**63-2-502(2)(a)**

▼ ————— ▼

**Administrative Services, Records  
Committee  
R35-5  
Subpoenas Issued by the Records  
Committee**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE No.: 27623

FILED: 12/29/2004, 14:42

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: After a five-year review, the State Records Committee decided it was necessary to make an amendment.

SUMMARY OF THE RULE OR CHANGE: The definitions under Section R35-5-2 will be moved to the newly created Rule R35-1a, and Section R35-5-3 will be renumbered to Section R35-5-2. (DAR NOTE: The proposed new rule of R35-1a is under DAR No. 27621 in this issue.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 63-2-502(2)(a)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There is no cost impact to the state budget since this is a change only in the location of the definitions.

❖ LOCAL GOVERNMENTS: There is no cost impact to local government since this is a change only in the location of the definitions.

❖ OTHER PERSONS: There is no cost impact to other persons since this is a change only in the location of the definitions.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no cost impact since this is a change only in the location of the definitions.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule change allows for easier access to the definitions and does not create any fiscal impact on businesses. Camille Anthony, Executive Director

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ADMINISTRATIVE SERVICES  
RECORDS COMMITTEE  
ARCHIVES BUILDING  
SALT LAKE CITY UT 84114, or  
at the Division of Administrative Rules.

## DIRECT QUESTIONS REGARDING THIS RULE TO:

Janell Tuttle at the above address, by phone at 801-538-3052, by FAX at 801-538-3354, or by Internet E-mail at [jtuttle@utah.gov](mailto:jtuttle@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 02/14/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 02/15/2005

AUTHORIZED BY: Patricia Smith-Mansfield, Director

**R35. Administrative Services, Records Committee.****R35-5. Subpoenas Issued by the Records Committee.****R35-5-1. Authority and Purpose.**

In accordance with Subsection 63-2-403(10), Utah Code, this rule intends to establish the procedures for issuing subpoenas by the Records Committee.

**~~R35-5-2. Definitions.~~**

~~In addition to terms defined in Section 63-2-102, Utah Code, and in rule Section R35-2-2 of the Utah Administrative Code, the following apply to this rule:~~

~~(a) "Order" means the Decision and Order issued by the State Records Committee as provided by Subsection 63-2-403(11), Utah Code.~~

~~(b) "Subpoena" means a written order requiring appearance before the State Records Committee to give testimony in accordance with Section 63-2-403, Utah Code.~~

]

**R35-5-~~3~~2. Subpoenas.**

(a) In order to initiate a request for subpoena, a party shall file a written request with the chair of the state records committee at least 14 business days prior to a hearing. The request shall describe the purpose for which the subpoena is sought, and state specifically why, given that hearsay is available before the state records committee, the individual being subpoenaed must be present.

(b) The chair of the state records committee shall review each subpoena request and grant or deny the request within three business days, based on the following considerations:

(1) a weighing of the proposed witness' testimony as material and necessary; or

(2) a weighing of the burden to the witness against the need to have the witness present.

(c) If the chair grants the request, the requesting party may obtain a subpoena form, signed, but otherwise in blank, from the executive secretary of the state records committee. The requesting party shall fill out the subpoena and have it served upon the proposed witness at least seven business days prior to a hearing.

(d) A subpoenaed witness shall be entitled to witness fees and mileage reimbursement to be paid by the requesting party. Witnesses shall receive the same witness fees and mileage reimbursement allowed by law to witnesses in a state district court.

(e) A subpoenaed witness may file a motion to quash the subpoena with the executive secretary at least three business days prior to the hearing at which the witness has been ordered to be present, and shall simultaneously transmit a copy of that motion to the parties. Such motion shall include the reasons for quashing the

subpoena, and shall be granted or denied based on the same considerations as outlined in Subsection R35-5-3(b)(2). As part of the motion to quash, the witness must indicate whether a hearing on the motion is requested. If a hearing is requested, it shall be granted.

All parties to the appeal have a right to be present at the hearing. The hearing must occur prior to the appeal hearing, and shall be heard by the committee chair. The hearing may be in person, or by telephone, as determined by the committee chair. A decision on the motion to quash shall be rendered prior to the appeal hearing.

(f) If the chair denies the request for subpoena, the denial is final and unreviewable.

**KEY: government documents, state records committee, records appeal hearings**

~~July 16, 1999~~2005

Notice of Continuation July 2, 2004

63-2-502(2)(a)

▼ ————— ▼

## Administrative Services, Records Committee

### R35-6

### Expedited Hearing

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 27620

FILED: 12/29/2004, 14:35

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: After conducting a five-year review, the State Records Committee determined that an amendment was necessary.

SUMMARY OF THE RULE OR CHANGE: The definitions under Section R35-6-2 will be moved to the newly created rule R35-1a and the remaining sections will be renumbered. (DAR NOTE: The proposed new rule of R35-1a is under DAR No. 27621 in this issue.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 63-2-502(2)(a)

## ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There is no cost impact to the state budget since this is a change only in the location of the definitions.

❖ LOCAL GOVERNMENTS: There is no cost impact to local government since this is a change only in the location of the definitions.

❖ OTHER PERSONS: There is no cost impact to other persons since this is a change only in the location of the definitions.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no cost impact since this is a change only in the location of the definitions.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule change allows for easier access to the definitions and does not create any fiscal impact on businesses. Camille Anthony, Executive Director

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ADMINISTRATIVE SERVICES  
RECORDS COMMITTEE  
ARCHIVES BUILDING  
SALT LAKE CITY UT 84114, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Janell Tuttle at the above address, by phone at 801-538-3052, by FAX at 801-538-3354, or by Internet E-mail at jtuttle@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 02/14/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 02/15/2005

AUTHORIZED BY: Patricia Smith-Mansfield, Director

**R35. Administrative Services, Records Committee.  
R35-6. Expedited Hearing.**

**R35-6-1. Authority and Purpose.**

In accordance with Subsection 63-2-403(4)(a), this rule establishes the procedure for requesting and scheduling an Expedited Hearing.

**~~R35-6-2. Definitions.~~**

~~In addition to terms defined in Section 63-2-102, Utah Code, and in rule Section R35-2-2 of the Utah Administrative Code, the following apply to this rule:~~

~~(a) "Expedited Hearing" means a meeting by the Committee to review a designation of records by a government entity in a quicker manner than in accordance with Subsection 63-2-403(4)(a).~~

]

**R35-6-~~3~~2. Requests for an Expedited Hearing.**

(a) A party appealing a records designation to the Committee may request that a hearing be scheduled to hear the appeal prior to 14 days after the date the notice of appeal is filed by making a written request to the Executive Secretary. A copy of this request shall also be mailed to the government entity.

(b) A written request shall include the reason(s) the request is being made.

(c) The Executive Secretary shall consult with the chair of the Committee to decide whether an Expedited Hearing is warranted.

(d) The standard for granting an Expedited Hearing is "good cause shown." The chair shall take into account the reason for the request, and balance that against the burden to the Committee and the government entity.

**R35-6-~~4~~3. Scheduling the Expedited Hearing.**

(a) In the event that an Expedited Hearing is granted, the Executive Secretary shall poll the Committee to determine a date upon which a quorum can be obtained.

(b) After settling on a date no sooner than 5 days nor later than 14 days after the notice of appeal has been filed, the Executive Secretary shall contact the petitioner and government entity and schedule the hearing.

(c) The government entity shall file its response to the appeal with the Executive Secretary, and mail a copy to the petitioner no later than three days prior to the scheduled hearing. The Executive Secretary shall make this response available to the Committee as soon as possible.

**R35-6-~~5~~4. Holding the Expedited Hearing.**

(a) With the exception of the time frame for scheduling a hearing and providing responses, all other provisions governing hearings under the Government Records Access and Management Act (GRAMA) shall apply to Expedited Hearings.

**KEY: government documents, state records committee, records appeal hearings**

**~~July 16, 1999~~2005**

**Notice of Continuation July 2, 2004**

**63-2-502(2)**

▼ ————— ▼  
**Agriculture and Food, Regulatory  
Services  
R70-440-2  
Adopt by Reference**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 27628

FILED: 12/30/2004, 11:11

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This change corrects a code reference which is incorporated within this rule, Animal and Animal Products, CFR Title 9, Chapter III, Section 590.1 through 590.970 and Part 592, January 1, 2004, edition.

SUMMARY OF THE RULE OR CHANGE: There are two new additions to CFR Title 9, Chapter III, that will be incorporated into this rule. They are Section 590.970, Charges for storage, cartage, and labor with respect to products imported contrary to the Act, and Part 592, Voluntary inspection of egg products, January 1, 2004, edition.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 4-4-2

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: CFR Title 9, Chapter III, Part 590, Sections 590.1 through 590.970, January 1, 2004 edition, and CFR Title 9, Chapter III, Part 592, January 1, 2004 edition.

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: There will be no anticipated cost or savings to the state budget. The changes are being made to incorporated new changes in the federal statute.
- ❖ LOCAL GOVERNMENTS: There will be no anticipated cost or savings to local government. The changes are being made to incorporated new changes in the federal statute.
- ❖ OTHER PERSONS: There will be fees charged to the owner for storage, cartage, and labor with respect to any product which is imported under the Act. There will be fees charged and collected for voluntary inspections requested by the owner.

COMPLIANCE COSTS FOR AFFECTED PERSONS: In default of payment for storage, cartage or labor, shall constitute a lien against such product and any other product thereafter imported under the Act by or for such owner or consignee.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The fees charged for voluntary inspection services of egg products as provided by the federal Food Safety and Inspection Service (FSIS) shall be at the applicable rates, and on the basis set forth in 592.2 through 592.4. The fees shall be paid to FSIS.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

AGRICULTURE AND FOOD  
REGULATORY SERVICES  
350 N REDWOOD RD  
SALT LAKE CITY UT 84116-3087, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Marolyn Leetham, Chris Crnich, or Doug Pearson at the above address, by phone at 801-538-7114, 801-538-7150, or 801-538-7144, by FAX at 801-538-7126, 801-538-4949, or 801-538-7169, or by Internet E-mail at [leetham@utah.gov](mailto:leetham@utah.gov), [ccrnich@utah.gov](mailto:ccrnich@utah.gov), or [dpearson@utah.gov](mailto:dpearson@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 02/14/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 02/15/2005

AUTHORIZED BY: Cary G. Peterson, Commissioner

**R70. Agriculture and Food, Regulatory Services.**

**R70-440. Egg Products Inspection.**

**R70-440-1. Authority.**

- A. Promulgated under authority of Section 4-4-2[~~(j)~~].
- B. Scope: This rule shall apply to all egg products sold, bought, processed, manufactured or distributed within the State of Utah. It is the purpose of this rule to provide egg products

inspection at least equal to those imposed under the Federal Egg Products Inspection Act (21 U.S.C. 1031-1056).

**R70-440-2. Adopt by Reference.**

Accordingly, the division adopts the egg products inspection standards and procedures as specified in Animal and Animal Products, CFR Title 9, Chapter III, Sub- Chapter 590.1 through 590.[~~965~~]970, and CFR Title 9, Chapter III, Part 592, January 1, 200[~~3~~]4 edition, which is incorporated by reference within this rule.

**KEY: food inspection**

[~~2004~~]2005

4-4-2[~~(j)~~]



Capitol Preservation Board (State),  
Administration

**R131-8**

CPB Facilities and Grounds:  
Maintenance of Aesthetics

**NOTICE OF PROPOSED RULE**

(New Rule)

DAR FILE NO.: 27631

FILED: 12/30/2004, 15:43

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R131-8 defines the Capitol Preservation Board's statutory requirements to preserve, maintain, and restore Capitol Hill Facilities and Grounds as required by Section 63C-9-301.

SUMMARY OF THE RULE OR CHANGE: This new proposed rule establishes the care of facilities and grounds on Capitol Hill and protects the architectural integrity of the buildings.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63C-9-301

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: The Capitol Preservation Board finds that all costs associated with the preservation, maintenance, and restoration of Capitol Hill Facilities and Grounds, and contents are appropriated funds by the Legislature.
- ❖ LOCAL GOVERNMENTS: The action of the Capitol Preservation Board does not affect local government. Therefore, there is no anticipated cost or savings to local government.
- ❖ OTHER PERSONS: The action of the Capitol Preservation Board does not affect other persons. Therefore, there is no anticipated cost or savings to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The action of the Capitol Preservation Board does not affect compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The action of the Capitol Preservation Board does not affect businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

CAPITOL PRESERVATION BOARD (STATE)  
ADMINISTRATION  
Room E110 EAST BUILDING  
420 N STATE ST  
SALT LAKE CITY UT 84114-2110, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Sarah Whitney or David H. Hart at the above address, by phone at 801-538-3074 or 801-538-3074, by FAX at 801-538-3221 or 801-538-3221, or by Internet E-mail at swhitney@utah.gov or dhart@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 02/14/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 02/15/2005

AUTHORIZED BY: David H. Hart, AIA, Executive Director

**R131. Capitol Preservation Board (State), Administration.**

**R131-8. CPB Facilities and Grounds: Maintenance of Aesthetics.**

**R131-8-1. Purpose.**

Pursuant to section 63C-9-301(1)(b), Utah Code, this rule defines the Board's statutory requirement to preserve, maintain and restore Capitol Hill facilities and Capitol Hill grounds.

**R131-8-2. Authority.**

This rule is authorized under Subsection 63C-9-402(1), Utah Code, which directs the Executive Director to develop a master plan for the Board's approval to maintain, preserve, restore, and modify the Capitol Hill facilities and Capitol Hill grounds.

**R131-8-3. Definitions.**

In addition to terms defined in Sections 63-56-5 and 63C-9-102, Utah Code:

- (a) "Board" means the Capitol Preservation Board.
- (b) "Design Guidelines and Imperatives" means the document of project parameters developed and titled by that name, and issued by the Board, that sets forth the architectural design direction consistent with the master plan approved by the Board.
- (c) "Historic Fabric" means antiquities of various types, which are architectural elements both old and new, in existing and new structures that support the intent of the Board's master plan and the design guidelines and imperatives.

**R131-8-4. Alterations to Buildings Interiors.**

(a) Pursuant to Sections 63C-9-301 and 63C-9-402, Utah Code:

- (i) No alteration to the interior of any building on Capitol Hill that is under the control of the Board shall be made without the signed, written approval of the Executive Director.
- (ii) No alteration may be made to the interior of the Capitol Hill buildings that could have a visual or functional impact to the

exterior appearance of the buildings, without the signed, written approval of the Executive Director.

(iii) All alterations to the interior space of any Capitol Hill facility shall comply with the architectural Design Guidelines and Imperatives, and selected historic color guidelines as approved by the Executive Director, following Board approval.

(b) Historic building elements and components of significance may not be altered, changed or removed without the signed, written approval of the Executive Director. New elements that are used to restore the historically significant elements such as furnishings, paint color, lighting fixtures, artifacts and other finished materials that are consistent with the historic fabric of the Capitol, shall be treated as historically significant to the Capitol Complex. Such finishes shall apply to new structures as well as existing structures.

**R131-8-5. Exterior Building Alterations/Appearance.**

(a) All objects that need to be attached to or hung from the exterior elevation of the buildings shall first have the signed, written approval of the Executive Director following Board approval.

(b) All items that are required to be mounted on the roof of any building shall first be approved of the Executive Director following Board approval.

**R131-8-6. Alterations to Grounds.**

No objects may be permanently placed on the grounds without the signed, written approval of the Executive Director, following approval of the Board.

**R131-8-7. External Requests for Changes or Projects.**

Pursuant to Section 63C-9-301(L), Utah Code:

(1) Agencies, private parties or organizations which disagree with any aspect or function or appearance of Capitol Hill facilities, and seek to have changes or modifications made thereto, shall apply for approval of such a project or function by contacting the Executive Director. The applicant shall submit:

- (i) an application, and
- (ii) a request for a feasibility study to be conducted to determine if the requested change, modification or alteration is consistent with authorized functions or design guidelines and imperatives, and the Board's Master Plan.

(2) Following an analysis of an application or request, the Executive Director shall:

- (a) Find that the application or request is appropriate, and recommend approval to the Board; or
- (b) Recommend denial of the application or request to the Board; or
- (c) Contact the requesting agency/organization and suggest particular changes that may increase the possibility of the changes or project being more acceptable. Such suggestions will not be construed by the applicant as a guarantee of approval, but only that the change or project may be reconsidered.

(2) The Board may:

- (a) Approve with or without recommendation,
  - (b) Deny with or without recommendations, or
  - (c) Advise the Executive Director to meet with the applicant and redesign the change or request.
- (3) If the Board denies the change or request, the applicant shall be notified of the decision. If the applicant disagrees with the decision, and wishes to continue with his application or request, s/he shall begin again and re-apply.

(4) If the application or request is denied a second time, the applicant may not re-apply for the same request or project proposal until at least 12 months time has elapsed.

(5) If the Board approves the application or request, the applicant shall be notified by the Executive Director that the change or project has been approved in accordance with the following parameters.

(i) All changes, alterations and/or modifications to functions, uses or facilities, and approved by the Board, will be under the direction of the Executive Director.

(ii) Where needed, the Board shall retain a designer, contractor or other professionals to perform the work.

(iii) The Executive Director must give signed, written approval of and supervise the changes, or designs and construction work.

(iv) The Executive Director will assure that any work so conducted meets the scope of the master plan and the design guidelines and imperatives.

(v) The Executive Director will assure that all historically significant fabric is preserved and protected from damage.

**KEY: CPB, aesthetics, maintenance, architecture**  
**2005**  
**63C-9-301**



Capitol Preservation Board (State),  
Administration

**R131-9**

State Capitol Preservation Board Art  
Program and Policy

**NOTICE OF PROPOSED RULE**

(New Rule)

DAR FILE No.: 27632  
FILED: 12/30/2004, 16:02

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed new Rule R131-9 defines the authority and scope of the Capitol Preservation Board's Executive Director to develop plans, programs, and policies for the placement and care of art on the Capitol Complex.

SUMMARY OF THE RULE OR CHANGE: This proposed new rule establishes the art policy and program for the Capitol Preservation Board.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63C-9-301

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The Capitol Preservation Board finds that all costs associated with the preservation, maintenance, and restoration of Capitol Hill Facilities and Grounds, and contents are appropriated funds by the Legislature.

❖ LOCAL GOVERNMENTS: The action of the Capitol Preservation Board does not affect local government. Therefore, there is no anticipated cost or savings to local government.

❖ OTHER PERSONS: There may be some benefit to other persons when the Capitol Preservation Board purchases and/or commissions work. There may also be a benefit to individuals and/or organizations that provide art work in the Capitol Collection due to the maintenance and care of the art work provided by the Capitol Preservation Board. There may be a cost associated with the traveling exhibitions.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The action of the Capitol Preservation Board does not affect compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The action of the Capitol Preservation Board does not affect businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

CAPITOL PRESERVATION BOARD (STATE)  
ADMINISTRATION  
Room E110 EAST BUILDING  
420 N STATE ST  
SALT LAKE CITY UT 84114-2110, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Sarah Whitney or David H. Hart at the above address, by phone at 801-538-3074 or 801-538-3074, by FAX at 801-538-3221 or 801-538-3221, or by Internet E-mail at [swhitney@utah.gov](mailto:swhitney@utah.gov) or [dhart@utah.gov](mailto:dhart@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 02/14/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 02/15/2005

AUTHORIZED BY: David H. Hart, AIA, Executive Director

**R131. Capitol Preservation Board (State), Administration.**  
**R131-9. State Capitol Preservation Board Art Program and Policy.**

**R131-9-1. Purpose.**

Pursuant to Section 63C-9-402, Utah Code, this rule defines the authority and scope of the Capitol Preservation Board's Executive Director to develop plans, programs and policies for the placement and care of objects under the care of the Board in Capitol Hill facilities and on Capitol Hill grounds.

**R131-9-2. Authority.**

This rule is authorized by Subsection 63C-9-301(3), Utah Code, directing the Board to make rules to govern, administer and regulate the Capitol Hill facilities and grounds.

**R131-9-3. Definitions.**

(a) "Capitol Collection" means all antiquities, works of art, and objects of historical significance that are identified by and under the care and custody of the Capitol Preservation Board (Board); including not only paintings and sculptures but also objects of art

and architecture both in and out of the state art collection, also referred to as the "Alice Art Collection," which are under the custody and control of the Board.

(b) "Capitol Registrar and Curator" means the person responsible for the development, organization and care of the Capitol Collection. Pursuant to Section 63C-9-402(14), Utah Code, this person shall be a staff employee or contract-consultant to the Director.

(c) "Decorative Painting" means wall painting that adds detail and design to the ceiling and walls of a room. Decorative painting shall be considered art.

(d) "Giclee prints" means digitally mastered reproductions of a high quality that are approved by the Board for particular circumstances.

(e) "Original Works of Art" means painted or drawn art, sculpture, tapestries, photographs, mosaics, furniture, and other objects or furnishings of historical significance which are one-of-a-kind, unique and specifically created for the Capitol Complex and governmental agencies. This does not include mechanically reproduced prints, giclee prints, and copies of the work or other similar reproductions.

(f) "Private area" means space assigned to state officials or staff as part of the offices or work-space of a government agency. Such space is not considered a "public area(s)" as defined in Section 63C-9-701(4).

(h) "Semi-public area" means rooms or space which is not generally available to the public, but is most often accessible by invitation; including conference rooms, board rooms, waiting areas, foyers, etc.

(i) "Conservation Plan or Plan" means the plan developed under R131-9-6.

#### **R131-9-4. Collection Management and Development.**

Pursuant to Sections 63C-9-601 and 63C-9-702, Utah Code, the Board establishes the following methodology to acquire, control and exercise custody of art and furnishings:

(a) The Capitol Collection shall be organized by the Capitol Registrar/Curator and shall consist of five basic collections as follows:

Collection A: -- Site-Specific Paintings, Sculpture and Artifacts including the Original Works of Art attached to the building, which have historical significance, or were at one time included in the Capitol Collection. The Original Works of Art within this collection include items on permanent loan from the Alice Art Collection and items in a Capitol Collection separate from the Alice Art Collection. Among these are:

A1 -- Original Paintings such as oil, fresco, water-color, etc.,

A2 -- Sculpture for indoor and outdoor applications,

A3 -- Fiber and mixed media, and

A4 -- Plaques and commemorative works.

Collection B: -- Two and Three Dimensional Art and Artifacts including the Original Works of Art on temporary loan from various owners collections (including but not limited to the Utah State Senate, House of Representatives and Governors collections), such as:

B1 -- Original Paintings such as oil, fresco, water-color, etc.,

B2 -- Sculpture for indoor and outdoor applications

B3 -- Fiber and mixed media, and

B4 -- Plaques and commemorative works.

Collection C: -- Furniture, Fixtures and Equipment of a Historic or Decorative Nature that are intrinsic to the overall

composition and architectural value of the building or buildings; most typically consisting of:

C1 -- Historic, Legacy and Replicated Objects

C2 -- Traditional and System Objects, and

C3 -- Historic and New Decorative Lighting (indoor and outdoor) and Hardware.

Collection D: -- Miscellaneous items including Rugs, Mirrors, Artifacts and other non-classifiable items; which are generally included in the following categories:

D1 -- Carpets, Drapes and Rugs,

D2 -- Mirrors, Clocks, Artifacts, and

D3 -- Non-Classifiable items.

Collection E: -- Traveling Exhibitions and Displays which includes temporary and permanently displayed objects depending on the exhibit or display. The most typical collections would include:

E1 -- Capitol display cases, and

E2 -- Traveling exhibits.

(a) The Capitol Preservation Board and the Capitol Registrar and Curator shall research and determine what elements of Original Works of Art, both within the state's control, or out of the state's control, shall be included in the Capitol Collection. Such research shall use the most reliable documentation as the foundation for determining which Original Works of Art shall be part of the Capitol Collection.

(b) The Capitol Registrar and Curator shall design and implement appropriate forms for loan agreements, release of objects and registration and condition reports.

(c) The Capitol Preservation Board shall cooperate with the Utah Arts Council to draft and up-date a Memorandum of Understanding between the two agencies governing the development of the Capitol Collection of Original Works Art to be placed in the Capitol or other locations on Capitol Hill. The Memorandum of Understanding shall provide that the Utah Arts Council shall continue to list the Capitol Collection as part of the Alice Art Collection, but shall designate it as being on a permanent loan status.

#### **R131-9-5. Records and Data Management.**

Pursuant to Sections 63C-9-301(i) and 63C-9-402(5), Utah Code:

(a) Under direction of the Board's Executive Director, the Capitol Registrar and Curator shall define, identify, design, and implement a record of all art, sculpture, artifacts and artistic objects referenced in the collection as noted in R131-9-4, including:

(i) Object numbering,

(ii) Photographic documentation,

(iii) Computer data referencing,

(iv) Catalog carding,

(v) Inventory carding,

(vi) Accessioning and object filing,

(vii) Drafting copyright and reproduction agreements,

(viii) Bibliographic and historical record preparation, and provenance carding (origin and source),

(ix) Preparation of object condition reports, and

(b) The Capitol Registrar and Curator will design methodologies to itemize and keep the above data in a current, timely, and purposeful manner for review by the Arts Placement Subcommittee and the Capitol Preservation Board.

#### **R131-9-6. Conservation and Maintenance.**

Pursuant to Section 63C-9-301(f), Utah Code, the Capitol Registrar and Curator, under direction of the Executive Director,

shall develop a short and long-term Conservation Plan (plan) for the conservation and maintenance of all original works of art and artifacts. The Conservation plan shall include:

(a) That conservator(s) shall only in-paint with reversible materials which are accepted as appropriate in nationally certified conservation practice for master works; that the process shall not conceal or damage original artist work; and that "overpainting" is unacceptable and shall not be performed on objects covered by the Conservation Plan.

(b) That a maintenance schedule shall be incorporated into the Conservation Plan for each identified Original Work of Art.

(c) That budget recommendations for the maintenance and care of Original Works of Art shall be developed and submitted to the Board annually for approval and incorporation into the Board's budget, and

(d) That the Arts Placement Subcommittee shall cooperate with the Capitol Registrar and Curator to develop the Conservation Plan, for recommendation to the Board for approval and implementation.

#### **R131-9-7. Art Display.**

(a) The Capitol Preservation Board and Capitol Art Placement Subcommittee shall coordinate efforts by the Capitol Registrar/Curator to identify locations for original works of art in public areas within the Capitol and other Capitol Hill facilities. The Capitol Registrar and Curator shall contact heads of individual offices, agencies to facilitate the hanging of Original Works of Art from the Alice Art Collection or other collections, within Capitol Hill facility public lobbies and semi-public spaces. The Capitol Registrar and Curator will only assist with placements of art within state employee office areas, when requested.

(b) All Original Works of Art may be hung only by the Capitol Registrar and Curator in public and state employee office spaces. When placed in state staff offices, such art shall be monitored and recorded by the Capitol Registrar and Curator. When placement of art is requested by state employees, and the Capitol Registrar and Curator is contacted by for that purpose, he will record and monitor those as well. However, if works of art are hung in state employee offices without the knowledge of the Capitol Registrar and Curator, they will not be monitored and will not be considered part of the Capitol Collection and the Board will not have any responsibility for those artworks.

(c) Organizations such as the Utah Arts Council, Salt Lake County arts organizations, the Springville Museum of Art or similar groups, which have received requests from a state employee or elected official to provide art from their organization for placement in the Capitol, shall be required to first contact the Board prior to hanging such art. The Capitol Registrar and Curator shall record and monitor the art object while it remains on loan to such an office. If the borrowing organization fails to notify the Board of the loan, the Board will not be responsible for, nor shall the Office of Risk Management assume liability under any state risk-managed insurance policy for such artwork.

(d) The use or display of art-objects in Capitol Hill facilities and Capitol Grounds shall be conducted according to the following protocols:

(i) Capitol Building -- Only Original Works of Art shall be hung or displayed in the Capitol Building public areas and within ceremonial rooms such as Governor's Public Office and Reception Room, House Chambers and House Reception Room, Senate

Chambers and Senate Reception Room, Supreme Court Chambers, State Room, Committee Rooms, Board Rooms, and Auxiliary Corridors.

(ii) Senate and House Buildings -- Original Works of Art shall be displayed, hung or attached to the walls in the main public lobbies. Original Works of Art and giclee prints may be hung in other public areas in the buildings including the House and Senate Public Lobbies, the Committee Rooms and the main entries to the various offices in the buildings.

(iii) State Office Buildings -- Original Works of Art shall be displayed, hung or attached to the walls in the main public lobbies. Original Works of Art and giclee prints may be hung in other public areas in the buildings.

When considering a placement of artwork, the Capitol Registrar and Curator shall consider the following needs for, and circumstances incidental to, prior to giving approval to hang or otherwise place the artwork:

(A) lighting and other environmental controls,

(B) security devices and related equipment,

(C) communication devices, and

(D) any other device or object needed for appropriate building functions.

#### **R131-9-8. Commissioning of New Art.**

Pursuant to Section 63C-9-703, Utah Code:

(1) The Capitol Registrar and Curator shall coordinate efforts with the Capitol Arts Placement Sub-Committee to facilitate the commission of new art as follows:

(a) Determine the location, subject matter and medium for the desired work and present information to the Capitol Preservation Board for approval;

(b) Issue a Request for Qualifications to artists who have demonstrated expertise in the type or medium of artistic projects being considered, or specified; and

(2) The Executive Director shall appoint a selection committee, consisting of members from the Capitol Arts Placement Sub-Committee, the Capitol Preservation Board, and staff of the Executive Director and Capitol Architect.

(3) The Selection Committee shall review artist qualifications and expertise, and shall develop a short list of at least three and no more than six qualified artists to compete for the commission.

(4) The short-listed artists shall be provided a stipend consistent with the assignment to submit a mockup or model which demonstrates the proposed work using the specified medium and subject matter, plus suggested modifications.

(5) The Selection Committee will review the submitted:

(i) mockups or models,

(ii) written explanations, and

(iii) fees for the work as installed in the location specified.

(6) Following the decision by the Selection Committee the Capitol Registrar and Curator shall inform the Capitol Arts Placement Sub-Committee and convey their recommendations to the Board. The Board shall review the recommended submittal(s). If approved by the Board, the Executive Director shall enter into a contractual arrangement with the selected artist.

(7) After the work is delivered and installed to the specified location, the ownership of the Original Work of Art shall be the property of the Capitol Preservation Board and shall be part of the permanent Capitol Collection. The Board may relocate the Original Art Work at any time.

**R131-9-10. Decorative Painting and Historic Fabric.**

(1) Decorative Painting and Historic Wall Fabric in the Capitol which has been recreated or restored to its original design, or close to its original design and detail, is considered a valuable component of the State Capitol. Colors, designs and locations shall be carefully researched and documentation shall be provided to the Executive Director. Given the sensitive nature and the expense for restoring painted historic fabric and decorative painting, the following protocols shall apply:

(a) in all space public and semi-public space, the decorative painting and Historic Fabric material shall be considered as artwork. It shall not be covered up, changed or painted over except by consent and direction of the Capitol Preservation Board, after review and recommendation by the Art Placement Subcommittee.

(b) The Capitol Preservation Board shall not control the use, organization or management of assigned private office spaces of Elected Officials and staff in the House of Representatives, and State Senate or Governors offices. However, the walls and the historic fabric and decorative paint in such semi-private/semi-public areas are considered to be a historical part of the Capitol, and shall not be decorated, marked, painted over or changed without approval by the Executive Director. Pursuant to Section 63C-9-301(1)(b), the Board shall preserve, maintain and restore the Capitol Hill facilities, grounds and their contents, including all attached and building art work. Accordingly, such spaces shall not be covered up, changed or painted over except by consent and direction of the Capitol Preservation Board.

(c) The placement or hanging of paintings or other artwork on the walls in these spaces shall be the prerogative of the organization assigned to use the space, but the Capitol Preservation Board shall provide for and supervise the installation of hanging devices for artwork to avoid damage to the walls. This same policy shall also apply to all such private offices or spaces where decorative painting or Historic Fabric exists.

**R131-9-11. Artwork, Plaques and Exhibits in Public Space.**

(1) Public Space within the Capitol and other building on Capitol Hill is defined as any space not assigned to the Executive Branch offices, Legislative Offices or Chambers or Judicial Offices or Chambers, or for maintenance. It shall include auxiliary and public circulation corridors in the basement, on the first, second, third and fourth levels. It does not include private (non-public) circulation corridors or secure circulation corridors which provide for internal or secure circulation. Public Space shall be open to the general public during the hours of operation which the capitol is open. This space is under the direction of the Board. The Board shall be responsible for the establishment of rules for the hanging of art as described in this rule.

(2) Semi-Public Space within the Capitol and other buildings on Capitol Hill shall be defined as the Lobby or other space which the public may freely enter with in the Executive Branch offices, Legislative Offices or Judicial Offices. These spaces are under the control of the state entity to which the space has been assigned. Only original art shall be hung in these spaces and the Executive Director's office shall be contacted to approve, and to assist the state entity with such tasks.

(3) Artwork and Plaques shall not be hung or mounted on the Second floor of the State Capitol Building.

(4) The hanging of Artwork, Plaques and Notice Boards on the third floor of the State Capitol Building shall be in designated spaces

only. No other artwork, plaque or information device shall be hung on the walls on this floor.

(5) The first and fourth floor of the State Capitol Building shall be reserved for artwork of various types, but shall be under the direction of the Capitol Registrar and Curator and the Executive Director to provide permanent and temporary shows and exhibitions after approval of the Board.

(6) The State Capitol shall not be used to promote or market a product, name or sponsor any particular company, item or industry.

(7) Memorial and Commemorative plaques shall be located on the Memorial walk which has been specifically design to honor and respect those who have contributed in remarkable ways to the success of and reputation of the State. Organizations that have ceremonies that are part of there commemorative process will be given permission to use the Rotunda, Grand Stairs, and Grounds for the ceremonies as needed without fee.

**KEY: CPB, art, policy, program**

**2005**

**63C-9-301**

Commerce, Administration

**R151-1**

Department of Commerce General Provisions

**NOTICE OF PROPOSED RULE**

(New Rule)

DAR FILE NO.: 27633

FILED: 12/30/2004, 16:29

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this new rule is to create a general rule in which miscellaneous provisions are maintained, the first of which is a provision regarding the oath of office for board members, commissioners, and investigators.

SUMMARY OF THE RULE OR CHANGE: This rule designates various positions within the Department of Commerce as those who can administer the oath of office for board members, commissioners, and investigators.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art. IV, Sec. 10; Subsections 53-13-101(12), 13-1-6(1), and 13-1-2(1)(b)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The state budget should not be affected in any way. The duties of administering the oath will be handled within the existing positions and budget of the Department.

❖ LOCAL GOVERNMENTS: Local government is not affected by this rule. Therefore, there is no anticipated cost or savings to local government.

❖ OTHER PERSONS: There should be no costs to other persons as a result of this rule change. The oath of office has always been required by Utah Const. Art. IV, Sec. 10. This rule establishes the procedure for the administration of the oath.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There should be no costs to regulated industries as a result of this rule change. The oath of office has always been required by Utah Const. Art. IV, Sec. 10. This rule establishes the procedure for the administration of the oath.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact to businesses is anticipated as a result of this rule, which establishes the procedure for administration of oaths of office for board members, commissioners and investigators.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

COMMERCE  
ADMINISTRATION  
HEBER M WELLS BLDG  
160 E 300 S  
SALT LAKE CITY UT 84111-2316, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
Masuda Medcalf at the above address, by phone at 801-530-7663, by FAX at 801-530-6446, or by Internet E-mail at mmedcalf@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 02/14/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 02/15/2005

AUTHORIZED BY: Jason Perry, Deputy Director

**R151. Commerce, Administration.**  
**R151-1. Department of Commerce General Provisions.**  
**R151-1-1. Oaths to Investigators and to Members of Boards and Commissions.**

Each investigator employed by the Department of Commerce, and each board member and commission member working in conjunction with the Department or its Divisions, shall take the oath of office required by the Utah Constitution, Art. IV, Sec. 10. The oath of office may be administered by the following personnel within the Department: Department Executive Director and Deputy Director, Division Directors, Administrative Law Judges, Commerce Managers II, Division Assistant Directors, and Division Bureau Managers.

**KEY: oath, board members, investigators**  
**2005**  
**Art. IV, Sec. 10**  
**53-13-101(12)**  
**13-1-6(1)**  
**13-1-2(1)(b)**

Commerce, Administration  
**R151-14-3**  
Adjudicative Proceedings

**NOTICE OF PROPOSED RULE**  
(Amendment)

DAR FILE No.: 27634  
FILED: 12/30/2004, 16:33

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule changes the designation of adjudicative proceedings from informal to formal.

SUMMARY OF THE RULE OR CHANGE: As authorized by Subsection 13-14-107(2)(c) and Section 63-46b-4, this amendment designates adjudicative proceedings as formal. Appeals from a final decision will now be to the Court of Appeals and on the record, thus preserving the expertise of the Utah Motor Vehicle Franchise Advisory Board.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63-46b-4 and Subsection 13-14-107(2)(c)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: A court reporter must be hired to transcribe the hearing in formal adjudicative proceedings, which is estimated at \$200 per day. An estimated three cases reach the hearing stage each year, so the agency could potentially expend from \$600 to \$1,000 per year on transcription costs. However, this amount can be absorbed within the current budget for the agency.

❖ LOCAL GOVERNMENTS: Local government is not affected by this rule. Therefore, there is no anticipated cost or savings to local government.

❖ OTHER PERSONS: There is no cost to other persons, because only the regulated industry which participates in adjudicative proceedings before this agency will be affected.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The regulated industry currently expends much effort and funds in presenting cases before the agency. In a formal adjudication, the industry might choose to expend more effort and funds in preparing and presenting cases. Theoretically, however, an appeal on the record could reduce the likelihood of incurring subsequent costs through judicial review. Therefore, there may be a wash as to the costs incurred by the industry in preparation of cases. In addition, initial comments to the agency indicate that the industry is supportive of this change to formal adjudicative proceedings.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: It is anticipated that there will be no fiscal impact to businesses in general resulting from this rule change; only the regulated industry will be affected by the procedures followed by the agency in its adjudicative proceedings.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

COMMERCE  
ADMINISTRATION  
HEBER M WELLS BLDG  
160 E 300 S  
SALT LAKE CITY UT 84111-2316, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Masuda Medcalf at the above address, by phone at 801-530-7663, by FAX at 801-530-6446, or by Internet E-mail at mmedcalf@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 02/14/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 02/15/2005

AUTHORIZED BY: Jason Perry, Deputy Director

#### **R151. Commerce, Administration.**

##### **R151-14. New Automobile Franchise Act Rule.**

##### **R151-14-3. Adjudicative Proceedings.**

(1) ~~Informal Proceeding.~~ Pursuant to the authority granted by Section 13-14-10[4]7(2)(c), administrative and adjudicative proceedings ~~conducted~~ before the Board shall be conducted ~~informally~~ as formal adjudicative proceedings.

(2) Applicable Rules. In addition to Title 63, Chapter 46b, Utah Administrative Procedures Act, any adjudicative proceedings required by the New Automobile Franchise Act shall be conducted in accordance with this rule and with the Department of Commerce Administrative Procedures Act Rule, R151-46b.

(3) Procedure for Substitution of Presiding Officer. In accordance with Sections 63-46b-2(1)(h) and 13-14-107(2), the Executive Director of the Department may upon his/her own motion substitute an administrative law judge as the presiding officer to conduct certain aspects of the adjudicative proceedings before the Board if he/she determines that fairness to the parties would not be compromised by such substitution. The substitution order shall give any party who feels that such substitution would compromise fairness an opportunity to request the Executive Director to reconsider the substitution by submitting written objections and supporting arguments to the Executive Director. Upon reconsideration, the Executive Director may leave the order intact or make such other orders as he/she deems appropriate.

(4) Submissions. Except as otherwise expressly required or permitted in this Rule or in the New Automobile Franchise Act, all correspondence or other submissions shall be directed to the Chair of the Utah Motor Vehicle Franchise Advisory Board at the Utah Department of Commerce.

(5) Form of Pleadings. A request for approval of an act regulated by the New Automobile Franchise Act shall be commenced by the filing of a pleading headed "BEFORE THE DEPARTMENT OF COMMERCE" and captioned "Request for Agency Action." The pleading shall be substantially in compliance with the Utah Administrative Procedures Act, Section 63-46b-3, and

the Department of Commerce Administrative Procedures Act Rule, R151-46b-7.

(6) Answer. If the presiding officer determines that an answer to any request for agency action would be helpful to the proceedings, the presiding officer may order a party to the proceedings to file an answer.

(7) Memoranda. If the presiding officer determines that prehearing briefs would be helpful to the proceedings, the presiding officer may order the parties to submit memoranda in accordance with any scheduling order entered by the presiding officer.

(8) GRAMA. Any requests for records of the proceedings before the Board will be governed by GRAMA (Government Records Access and Management Act), Utah Code Ann. Section 63-2-101 et seq. Any schedule of records classifications maintained by the Department shall be made available to the parties upon request.

**KEY: automobiles, motor vehicles, franchises, recreational vehicles**

~~June 17, 2003~~ February 15, 2005

**Notice of Continuation November 14, 2001  
13-14-101 et seq.**

## Commerce, Administration **R151-35-3** Adjudicative Proceedings

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 27635

FILED: 12/30/2004, 16:35

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule changes the designation of adjudicative proceedings from informal to formal.

**SUMMARY OF THE RULE OR CHANGE:** As authorized by Subsection 13-35-107(2)(c) and Section 63-46b-4, this amendment designates adjudicative proceedings as formal. Appeals from a final decision will now be to the Court of Appeals and on the record, thus preserving the expertise of the Utah Powersport Vehicle Franchise Advisory Board.

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 63-46b-4 and Subsection 13-35-107(2)(c)

**ANTICIPATED COST OR SAVINGS TO:**

❖ **THE STATE BUDGET:** A court reporter must be hired to transcribe the hearing in formal adjudicative proceedings, which is estimated at \$200 per day. An estimated three cases reach the hearing stage each year, so the agency could potentially expend from \$600 to \$1,000 per year on transcription costs. However, this amount can be absorbed within the current budget for the agency.

❖ **LOCAL GOVERNMENTS:** Local government is not affected by this rule. Therefore, there is no anticipated cost or savings to local government.

❖ OTHER PERSONS: There is no cost to other persons, because only the regulated industry which participates in adjudicative proceedings before this agency will be affected.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The regulated industry currently expends much effort and funds in presenting cases before the agency. In a formal adjudication, the industry might choose to expend more effort and funds in preparing and presenting cases. Theoretically, however, an appeal on the record could reduce the likelihood of incurring subsequent costs through judicial review. Therefore, there may be a wash as to the costs incurred by the industry in preparation of cases. In addition, initial comments to the agency indicate that the industry is supportive of this change to formal adjudicative proceedings.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: It is anticipated that there will be no fiscal impact to businesses in general resulting from this rule change; only the regulated industry will be affected by the procedures followed by the agency in its adjudicative proceedings.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

COMMERCE  
ADMINISTRATION  
HEBER M WELLS BLDG  
160 E 300 S  
SALT LAKE CITY UT 84111-2316, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Masuda Medcalf at the above address, by phone at 801-530-7663, by FAX at 801-530-6446, or by Internet E-mail at [mmedcalf@utah.gov](mailto:mmedcalf@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 02/14/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 02/15/2005

AUTHORIZED BY: Jason Perry, Deputy Director

#### **R151. Commerce, Administration.**

#### **R151-35. Powersport Vehicle Franchise Act Rule.**

#### **R151-35-3. Adjudicative Proceedings.**

(1) ~~Informal~~ Formal Proceeding. Pursuant to the authority granted by Section 13-35-10[4]7(2)(c), administrative and adjudicative proceedings ~~conducted~~ before the Board shall be conducted ~~informally~~ as formal adjudicative proceedings.

(2) Applicable Rules. In addition to Title 63, Chapter 46b, Utah Administrative Procedures Act, any adjudicative proceedings required by the Powersport Vehicle Franchise Act shall be conducted in accordance with this rule and with the Department of Commerce Administrative Procedures Act Rule, R151-46b.

(3) Procedure for Substitution of Presiding Officer. In accordance with Sections 63-46b-2(1)(h) and 13-35-107(2), the

Executive Director of the Department may upon his/her own motion substitute an administrative law judge as the presiding officer to conduct certain aspects of the adjudicative proceedings before the Board if he/she determines that fairness to the parties would not be compromised by such substitution. The substitution order shall give any party who feels that such substitution would compromise fairness an opportunity to request the Executive Director to reconsider the substitution by submitting written objections and supporting arguments to the Executive Director. Upon reconsideration, the Executive Director may leave the order intact or make such other orders as he/she deems appropriate.

(4) Submissions. Except as otherwise expressly required or permitted in this Rule or in the Powersport Vehicle Franchise Act, all correspondence or other submissions shall be directed to the Chair of the Utah Powersport Vehicle Franchise Advisory Board at the Utah Department of Commerce.

(5) Form of Pleadings. A request for approval of an act regulated by the Powersport Vehicle Franchise Act shall be commenced by the filing of a pleading headed "BEFORE THE DEPARTMENT OF COMMERCE" and captioned "Request for Agency Action." The pleading shall be substantially in compliance with the Utah Administrative Procedures Act, Section 63-46b-3, and the Department of Commerce Administrative Procedures Act Rule, R151-46b-7.

(6) Answer. If the presiding officer determines that an answer to any request for agency action would be helpful to the proceedings, the presiding officer may order a party to the proceedings to file an answer.

(7) Memoranda. If the presiding officer determines that prehearing briefs would be helpful to the proceedings, the presiding officer may order the parties to submit memoranda in accordance with any scheduling order entered by the presiding officer.

(8) GRAMA. Any requests for records of the proceedings before the Board will be governed by GRAMA (Government Records Access and Management Act), Utah Code Ann. Section 63-2-101 et seq. Any schedule of records classifications maintained by the Department shall be made available to the parties upon request.

**KEY: motorcycles, dirt bikes, off road vehicles, franchises**  
~~June 17, 2003~~ **February 15, 2005**  
13-35-101 et seq.

▼ ————— ▼

## Commerce, Administration **R151-46b** Department of Commerce Administrative Procedures Act Rules

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 27636

FILED: 12/30/2004, 16:39

### RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule filing codifies and clarifies existing procedures relating to testimony provided under oath, transcripts of proceedings, and service of pleadings.

**SUMMARY OF THE RULE OR CHANGE:** Subsection R151-46b-5(b) codifies the existing requirement for written requests for extensions. Subsection R151-46b-6(a) contains a grammatical change from "himself" to "oneself," and replaces the enlarging term "include" with "means" to clarify that a party may be represented by counsel but not by a lay person. Subsection R151-46b-10(7) is added specifically to address the requirement of an oath for informal adjudicative proceedings, because no such requirement appears in the Utah Administrative Procedures Act. Subsection R151-46b-12(d)(i) is new and codifies the existing practice of requiring page and line numbers in a hearing record transcription, as well as a certificate of the transcriber that the transcription is accurate. Subsections R151-46b-12(3)(e) and R151-46b-12(5)(c) emphasize the importance of service on other parties and provide that deadlines for the filing of memoranda are measured from such service.

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 13-1-6, and Title 63, Chapter 46b

**ANTICIPATED COST OR SAVINGS TO:**

- ❖ **THE STATE BUDGET:** This rule filing does not affect the State budget, because the amendments clarify existing practices.
- ❖ **LOCAL GOVERNMENTS:** There is no impact to local governments, because this rule does not apply to local governments.
- ❖ **OTHER PERSONS:** There are no costs to other persons as only those who appear before this agency in adjudicative proceedings will be affected by these amendments.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There should be no costs to the regulated industry, because these amendments merely clarify existing practices and procedures.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** No fiscal impact to businesses is anticipated as a result of this rule filing which codifies or clarifies existing practices and procedures in adjudicative proceedings before the agency.

**THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:**

COMMERCE  
ADMINISTRATION  
HEBER M WELLS BLDG  
160 E 300 S  
SALT LAKE CITY UT 84111-2316, or  
at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

Masuda Medcalf at the above address, by phone at 801-530-7663, by FAX at 801-530-6446, or by Internet E-mail at mmedcalf@utah.gov

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 02/14/2005.**

**THIS RULE MAY BECOME EFFECTIVE ON: 02/15/2005**

**AUTHORIZED BY:** Jason Perry, Deputy Director

**R151. Commerce, Administration.**

**R151-46b. Department of Commerce Administrative Procedures Act Rules.**

**R151-46b-5. General Provisions.**

(1) Liberal Construction.

These rules shall be liberally construed to secure the just, speedy, and economical determination of all issues presented in adjudicative proceedings before the department.

(2) Deviation from Rules.

The presiding officer may permit or require a deviation from these rules upon a determination that compliance therewith is impractical or unnecessary.

(3) Utah Rules of Civil Procedure.

The Utah Rules of Civil Procedure and case law thereunder may be looked to as persuasive authority upon these rules, but shall not, except as otherwise provided by Title 63, Chapter 46b, Administrative Procedures Act, or by these rules, be considered controlling authority.

(4) Computation of Time.

(a) Periods of time prescribed or allowed by these rules, by any applicable statute or by an order of a presiding officer shall be computed as to exclude the first day of the act, event, or default from which the designated period of time begins to run. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. Whenever a party has the right or is required to do some act or take some action within a prescribed period after the service of a notice or other paper upon him and service is by mail, three days shall be added to the prescribed period.

(b) For good cause shown, the presiding officer may extend a time period under these rules on his own motion or upon written application from either party.

(5) Extension of Time; Continuance of Hearing.

When a statute, or these rules, authorizes the presiding officer to extend a time period or grant a continuance of a hearing, the presiding officer shall consider the following factors, and such other factors as may be appropriate, in determining whether to grant such extension or continuance:

(a) whether there is good cause for granting the extension or continuance;

(b) the number of extensions or continuances the requesting party has already received;

(c) whether the extension or continuance will work a significant hardship upon the other party;

(d) whether the extension or continuance will be prejudicial to the health, safety or welfare of the public; and

(e) whether the other party objects to the extension or continuance.

(6) Conflict.

In the event of a conflict between these rules and any statutory provision, the statute shall govern.

(7) Necessity of Compliance with GRAMA.

To the extent that the Utah Government Records Access and Management Act ("GRAMA") would impose a restriction on the ability of a party to disclose any record which would otherwise have to

be disclosed under these rules, such record shall not be disclosed except upon compliance with the requirements of that Act.

#### **R151-46b-6. Representation of Parties.**

(a) A party may be represented by counsel or may represent ~~him~~ oneself individually, or if not an individual, may represent itself through an officer or employee. For the purpose of this provision, the term "counsel" ~~includes~~ means active members of the Utah State Bar or active members of any other state bar.

(b) Counsel from a foreign licensing state shall submit a notice of appearance to the presiding officer along with a certificate of good standing from the foreign licensing state.

#### **R151-46b-10. Hearings.**

##### (1) Hearings Required or Permitted.

A hearing shall be held in all adjudicative proceedings in which a hearing is:

- (a) required by statute or rule and not waived by the parties; or
- (b) permitted by statute or rule and timely requested.

##### (2) Time to Request Permissive Hearing.

A request for a hearing permitted by statute or rule must be received no later than:

- (a) the time period for filing a response to a notice of agency action if a response is required or permitted;
- (b) twenty days following the issuance of a notice of agency action if a response is not required or permitted; or
- (c) the filing of the request for agency action.

##### (3) Scheduling of Hearings.

(a) The date, time, and place of a hearing shall be set forth in the notice of agency action or the notice of receipt of request for agency action, or, if not known at the time of the notice, in a separate notice of hearing.

(b) The presiding officer may, upon a determination of good cause, issue an order modifying the date, time, or place of a hearing.

##### (4) Hearings Open to Public; Exceptions.

(a) Any hearing in an adjudicative proceeding is open to the public unless closed by the presiding officer conducting the hearing, pursuant to Title 63, Chapter 46b, the Administrative Procedures Act, or by a presiding officer who is a public body, pursuant to Title 52, Chapter 4, the Open and Public Meetings Act.

(b) The deliberative process of an adjudicative proceeding is a quasi-judicial function exempt from the Open and Public Meetings Act. Deliberations are closed to the public.

##### (5) Bifurcation of Hearing.

The presiding officer, good cause appearing, may order a hearing bifurcated into a findings phase relative to the allegations set forth in the petition, and a sanctions phase, if required, based upon the findings.

##### (6) Order of Presentation in Hearings.

The order of presentation of evidence in hearings in formal adjudicative proceedings shall normally be as follows:

- (a) opening statement of the party with the burden of proof;
- (b) opening statement of the opposing party, unless the party reserves the opening statement until the presentation of its case-in-chief;
- (c) case-in-chief of the party which has the burden of proof and cross examination of witnesses by opposing party;
- (d) case-in-chief of the opposing party and cross examination of witnesses by the party with the burden of proof;
- (e) rebuttal case by the party which has the burden of proof;
- (f) surrebuttal case by the opposing party;

(g) further rebuttal or surrebuttal as permitted by the presiding officer;

(h) closing argument by the party which has the burden of proof;

(i) closing argument by the opposing party; and

(j) final argument by the party which has the burden of proof.

##### (7) Testimony Under Oath.

All testimony presented at a hearing, if offered as evidence to be considered in reaching a decision on the merits, shall be given under oath administered by the presiding officer.

##### (8) Telephonic Testimony.

(a) Telephonic testimony is only permissible in a formal adjudicative proceeding upon the consent of the parties or if warranted by exigent circumstances. Normally, expenses which would be incurred by a party to produce in-person testimony do not constitute an exigent circumstance as to justify telephonic testimony in a formal adjudicative proceeding. Telephonic testimony is generally permissible in an informal proceeding upon the request of any party.

(b) When telephonic testimony is to be presented, the presiding officer shall require that the identity of any witness so testifying be established. The presiding officer shall also provide safeguards to assure the witness does not refer to documents improperly and to reduce the possibility the witness may be coached or influenced during their testimony.

##### ([8]9) Standard of Proof.

The standard of proof in all proceedings under these rules, whether initiated by a notice of agency action or request for agency action, shall be a preponderance of the evidence.

##### ([9]10) Burden of Proof.

The department has the burden of proof in any proceeding initiated by a notice of agency action. The party who seeks action from the department has the burden of proof in any proceeding initiated by a request for agency action.

##### (1[0]1) Default Procedures.

(a) Order entering the default of a party.

(i) The presiding officer may enter the default of a party in accordance with Section 63-46b-11, sua sponte or upon motion of a party.

(ii) A party filing a motion for entry of default shall also file an affidavit substantiating the grounds for the motion.

(iii) If the submissions establish a basis for entry of default, the presiding officer may enter the default without notice to the defaulting party or a hearing.

##### (b) Additional proceedings.

(i) Following the entry of default, the presiding officer may, sua sponte or upon motion of a party, conduct further proceedings and enter a final order based on the submissions filed without notice to or participation by the defaulting party when:

(A) the relief sought against the party is specifically set forth in the pleadings that were served upon that party;

(B) the factual allegations contained in those pleadings are supported by affidavit or by a verified petition; and

(C) those factual allegations, and applicable law, support the granting of the relief sought against that party.

(ii) In all other cases, the presiding officer shall not enter a final order without conducting a hearing in which the party seeking relief may submit proffers, evidence, or legal arguments in support of the relief it requests against the defaulting party. The hearing may be held without notice to or participation by the defaulting party if the pleadings served upon the defaulting party set forth the potential relief which could be obtained against such party.

(c) The order of default and the final order may be concurrently issued.

(1[+]~~2~~) Record of Hearing.

(a) Record Requirement.

The presiding officer shall cause a record to be made of all prehearing conferences and all hearings which are conducted.

(b) Record Methods.

(i) Formal Adjudicative Proceedings.

The presiding officer shall cause the record of a hearing in a formal adjudicative proceeding to be made by means of a certified shorthand reporter, unless the presiding officer determines it to be unnecessary or impracticable, in which case he shall cause the record to be made by means of an audio or video cassette recorder or other recording device.

(ii) Informal Adjudicative Proceedings.

The presiding officer may cause a record of a hearing in an informal adjudicative proceeding to be made by a method set forth in Subsection (i) or by minutes prepared or adopted by the presiding officer.

(c) Record Expense.

The hearing in an adjudicative proceeding shall be recorded at the expense of the agency.

(d) Transcription of Record.

(i) The record of a hearing is not required to be transcribed. However, a party may elect to have the record of a hearing transcribed by the reporter who reported the hearing or by a ~~reporter~~ person approved by the presiding officer. A transcript of a hearing record shall contain the certification of the transcriber, stating that the transcript is a correct and accurate transcription of the hearing record. Pages and lines in a transcript shall be numbered for referencing purposes.

(ii) The party requesting the transcript shall bear the cost of the transcription.

(iii) The original transcript of a record of a hearing shall be filed with the presiding officer.

(1[2]~~3~~) Fees.

(a) Witness Fees.

Witnesses appearing upon the demand or at the request of a party shall be entitled to receive payment from that party in the amount of \$18.50 for each day in attendance and, if traveling more than 50 miles to attend and return from the hearing, shall be entitled to receive 25 cents per mile for each mile thus actually and necessarily traveled. Any witness subpoenaed by a party other than the department may, at the time of service of the subpoena, demand one day's witness fee and mileage in advance and unless such fee is tendered, the witness shall not be required to appear.

(b) Interpreter and Translator Fees.

Interpreters and translators, including those skilled in foreign languages and communication with the deaf, shall be allowed such compensation for their services as the presiding officer may allow.

(c) Officers and Employees not Entitled to Fees - Exception.

No officer or employee of the United States, or of the State of Utah, or of any county, incorporated city or town within the State of Utah, shall receive any witness fee when testifying in an adjudicative proceeding unless the officer or employee is required to testify at a time other than during his normal working hours.

(d) Only One Fee Per Day Allowed.

No witness shall receive fees in more than one adjudicative proceeding on the same day.

#### **R151-46b-12. Agency Review.**

(1) Availability of Agency Review.

Except as otherwise provided in Subsection 63-46b-11(3)(c), an aggrieved party may obtain agency review of a final order by filing a request with the executive director of the department within thirty days following the issuance of the order.

(2) When Agency Review Is Not Available.

(a) Agency review is not available as to any order or decision entered by the following agencies:

(i) the Real Estate Appraiser Licensing and Certification Board;

(ii) the Utah Motor Vehicle Franchise Board;

(iii) the Utah Powersport Advisory Board; and

(iv) the Pete Suazo Utah Athletic Commission.

(b) Agency review is not available for any decisions or orders entered by the Division of Occupational and Professional Licensing as to the following matters:

(i) Prelitigation proceedings conducted pursuant to Title 78, Chapter 14, the Utah Health Care Malpractice Act;

(ii) Requests for modification to disciplinary orders issued by the Division of Occupational and Professional Licensing; and

(iii) Requests for entry into the Diversion Program pursuant to Section 58-1-404(4).

(c)(i) Agency reconsideration is available for orders or decisions exempt from agency review under Subsections (a) and (b)(ii), pursuant to R151-46b-13.

(ii) Agency reconsideration is not available for orders or decisions exempt from agency review under Subsections (b)(i) and (b)(iii), pursuant to Subsections 58-1-404(4) and 78-14-12(1)(c).

(3) Content of a Request for Agency Review - Transcript of Hearing - Service.

(a) The content of a request for agency review shall be in accordance with Subsection 63-46b-12(1)(b). The request for agency review shall include a copy of the order that is the subject of the request.

(b) A party requesting agency review shall set forth any factual or legal basis in support of that request, including adequate supporting arguments and citation to appropriate legal authority and to the relevant portions of the record developed during the adjudicative proceeding.

(c) If a party challenges a finding of fact in the order subject to review, the party must demonstrate, based on the entire record, that the finding is not supported by substantial evidence. A party challenging the facts bears the burden to marshal or gather all of the evidence in support of a finding and to show that despite such evidence, the finding is not supported by substantial evidence. The failure to so marshal the evidence permits the executive director to accept a division's findings of fact as conclusive. A party challenging a legal conclusion must support the argument with citation to any relevant authority and also cite to those portions of the record that are relevant to that issue.

(d) If the grounds for agency review include any challenge to a determination of fact or conclusion of law as unsupported by or contrary to the evidence, the party seeking agency review shall order and cause a transcript of the record relevant to such finding or conclusion to be prepared. When a request for agency review is filed under such circumstances, the party seeking review shall certify that a transcript has been ordered and shall notify the department when the transcript will be available for filing with the department. The party seeking agency review shall bear the cost of the transcript.

(e) A party seeking agency review shall, in the manner described in R151-46b-8, file and serve upon all other parties copies of correspondence~~[the request for agency review]~~, pleadings, and other submissions~~[to the appropriate division whose order is challenged]~~. If an attorney enters an appearance on behalf of a party, service shall thereafter be made upon that attorney, instead of directly to the party~~[the division, the party seeking agency review shall thereafter serve copies of relevant documents to the attorney]~~.

(f) Failure to comply with this rule may result in dismissal of the request for agency review.

(4) Stay Pending Agency Review.

(a) Upon the timely filing of a request for agency review, the party seeking review may request that the effective date of the order subject to review be stayed pending the completion of review. If a stay is not timely requested, the order subject to review shall take effect according to its terms.

(b) The division or committee that issued the order subject to review may oppose the request for a stay in writing within ten days from the date the stay is requested. Failure to oppose a timely request for a stay shall result in an order granting the stay unless the department determines that a stay would not be in the best interest of the public. The department may also enter an interim order granting a stay pending a decision on the motion for a stay.

(c) In determining whether to grant a request for a stay or a motion opposing that request, the department shall review the division's or committee's findings of fact, conclusions of law and order to determine whether granting a stay would, or might reasonably be expected to, pose a significant threat to the public health, safety and welfare. The department may also issue a conditional stay by imposing terms, conditions or restrictions on a party pending agency review.

(5) Memoranda.

(a) The department may order or permit the parties to file memoranda to assist in conducting agency review. Any memoranda shall be filed consistent with these rules or as otherwise governed by any scheduling order entered by the department.

(b) When no transcript is necessary to conduct agency review, any memoranda supporting a request for such review shall be concurrently filed with the request. If a transcript is necessary to conduct agency review, any supporting memoranda shall be filed no later than 15 days after the filing of the transcript with the department.

(c) Any response to a request for agency review and any memoranda supporting that response shall be filed no later than 15 days from the filing of the request for agency review or no later than 15 days from the filing service of any subsequent memoranda supporting that request. Any final reply memoranda shall be filed no later than five days after the filing service of a response to the request for agency review.

(6) Oral Argument.

The request for agency review or the response thereto shall state whether oral argument is sought in conjunction with agency review. The department may order or permit oral argument if the department determines such argument is warranted to assist in conducting agency review.

(7) Standard of Review.

The standards for agency review correspond to the standards for judicial review of formal adjudicative proceedings, as set forth in Subsection 63-46b-16(4).

(8) Type of Relief.

The type of relief available on agency review shall be the same as the type of relief available on judicial review, as set forth in Subsection 63-46b-17(1)(b).

(9) Order on Review.

The order on review shall comply with the requirements of Subsection 63-46b-12(6).

**KEY: administrative procedures, adjudicative proceedings, government hearings**

~~February 18, 2003~~ February 15, 2005

Notice of Continuation February 28, 2001

13-1-6

63-46b-1(6)

▼ ————— ▼

## Commerce, Occupational and Professional Licensing **R156-31b** Nurse Practice Act Rules

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 27600

FILED: 12/23/2004, 13:56

#### RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Amendments are being proposed to establish the specific scope of practice for a person licensed as a licensed practical nurse (LPN) or registered nurse (RN). Also updates a references to the Pharmacy Practice Act which was renumbered during the 2004 Legislative Session.

SUMMARY OF THE RULE OR CHANGE: In Section R156-31b-102, definitions for "comprehensive nursing assessment" and "focused assessment" are added and the remaining subsections are renumbered. In Section R156-31b-702, the statute citation is updated from Section 58-17a-620 to 58-17b-620. Two new sections are added: Section R156-31b-703 and Section R156-31b-704.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-31b-101, and Subsections 58-1-106(1)(a) and 58-1-202(1)(a)

#### ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The Division will incur minimal costs, approximately \$75, to reprint the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget.

❖ LOCAL GOVERNMENTS: Proposed amendments do not apply to local governments. Therefore, there is no anticipated cost or savings to local government.

❖ OTHER PERSONS: The Division does not anticipate any costs or savings associated with these proposed amendments as the amendments are only clarifying the scope of practice for LPNs and RNs.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The Division does not anticipate any costs or savings associated with these

proposed amendments as the amendments are only clarifying the scope of practice for LPNs and RNs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule filing includes technical changes to correct a statute reference and defines two terms. The proposed rule also documents the generally recognized scope of practice for registered nurses and licensed practical nurses. No fiscal impact to businesses is anticipated as a result of these technical and clarifying amendments. Klarice A. Bachman, Executive Director

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

COMMERCE  
OCCUPATIONAL AND PROFESSIONAL LICENSING  
HEBER M WELLS BLDG  
160 E 300 S  
SALT LAKE CITY UT 84111-2316, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Laura Poe at the above address, by phone at 801-530-6789, by FAX at 801-530-6511, or by Internet E-mail at lpoe@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 02/14/2005

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 1/28/2005 at 9:00 AM, Heber Wells Building, 160 E 300 S, Conference Room 4A, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 02/15/2005

AUTHORIZED BY: J. Craig Jackson, Director

**R156. Commerce, Occupational and Professional Licensing.  
R156-31b. Nurse Practice Act Rules.  
R156-31b-102. Definitions.**

In addition to the definitions in Title 58, Chapters 1 and 31b, as defined or used in these rules:

(1) "Absolute discharge", as used in Subsection 58-31b-302(7)(b), means the completion of criminal probation or parole.

(2) "Activities of daily living (ADLs)" means those personal activities in which individuals normally engage or are required for an individual's well-being whether performed by them alone, by them with the help of others, or for them by others, including eating, dressing, mobilizing, toileting, bathing, and other acts or practices to which an individual is subjected while under care in a regulated facility or under the orders of a licensed health care practitioner in a private residence.

(3) "Affiliated with an institution of higher education", as used in Subsection 58-31b-601(1), means the general and science education courses required as part of a nursing education program are provided by an educational institution which is approved by the Board of Regents or an equivalent governmental agency in another state or a private educational institution which is regionally

accredited by an accrediting board recognized by the Council for Higher Education Accreditation of the American Council on Education; and the nursing program and the institution of higher education are affiliated with each other as evidenced by a written contract or memorandum of understanding.

(4) "APRN" means an advanced practice registered nurse.

(5) "Approved continuing education" in Subsection R156-31b-303(3) means:

(a) continuing education that has been approved by a professional nationally recognized approver of health related continuing education;

(b) nursing education courses taken from an approved education program as defined in Section R156-31b-601; and

(c) health related course work taken from an educational institution accredited by a regional institutional accrediting body identified in the "Accredited Institutions of Postsecondary Education", 2003-04 edition, published by the American Council on Education.

(6) "Approved education program" as defined in Subsection 58-31b-102(3) is further defined to include any nursing education program published in the documents entitled "Directory of Accredited Nursing Programs", 2003, published by the National League for Nursing Accrediting Commission, which are hereby adopted and incorporated by reference as a part of these rules.

(7) "CCNE" means the Commission on Collegiate Nursing Education.

(8) "CGFNS" means the Commission on Graduates of Foreign Nursing Schools.

(9) "COA", as used in these rules, means the Council of Accreditation of Nurse Anesthesia Education Programs.

(10) "Clinical mentor/preceptor", as used in Section R156-31b-607, means an individual who is employed by a clinical health care facility and is chosen by that agency, in collaboration with the Parent-Program, to provide direct, on-site supervision and direction to a nursing student who is engaged in a clinical rotation, and who is accountable to both the clinical agency and the supervisory clinical faculty member.

(11) "Comprehensive nursing assessment", as used in these rules, means an extensive data collection (initial and ongoing) for individuals, families, groups and communities addressing anticipated changes in patient/client conditions as well as emergent changes in patient's/client's health status; recognizing alterations to previous patient/client conditions; synthesizing the biological, psychological, spiritual and social aspects of the patient's/client's condition; evaluating the impact of nursing care; and using this broad and complete analysis to make independent decisions and identification of health care needs; plan nursing interventions, evaluate need for different interventions and the need to communicate and consult with other health team members.

(12) "Contact hour" means 50 minutes.

~~(12) "Consultation", as used in Subsection R156-31b-703, means the LPN-GCM may develop or revise a treatment plan without the direction or immediate oversight of the RN. The LPN-GCM is to confer with or ask the advice of the RN as needed. However, the RN must review and approve treatment plans as required in Subsection R156-31b-703.~~

~~(13) "Contributing to or participating in", as used in Subsection 58-31-102(17), means a LPN makes observations, provides data, and input into the nursing process while under the direction of a RN, MD or other licensee as defined by these rules, who is responsible for developing and documenting the plan of care.~~

—)([14]13) "CRNA" means a certified registered nurse anesthetist.

([15]14) "Delegation" means transferring to an individual the authority to perform a selected nursing task in a selected situation. The nurse retains accountability for the delegation.

([16]15) "Direct supervision" is the supervision required in Subsection 58-31b-306(1)(a)(iii) and means:

(a) the person providing supervision shall be available on the premises at which the supervisee is engaged in practice; or

(b) if the supervisee is specializing in psychiatric mental health nursing, the supervisor may be remote from the supervisee if there is personal direct voice communication between the two prior to administering or prescribing a prescription drug.

([17]16) "Disruptive behavior", as used in these rules, means conduct, whether verbal or physical, that is demeaning, outrageous, or malicious and that places at risk patient care or the process of delivering quality patient care. Disruptive behavior does not include criticism that is offered in good faith with the aim of improving patient care.

(17) "Focused assessment", as used in these rules, means an appraisal of an individual's status and situation at hand, contributing to comprehensive assessment by the registered nurse, supporting ongoing data collection and deciding who needs to be informed of the information and when to inform.

(18) "Generally recognized scope and standards of nursing practice", as referred to in Subsections 58-31b-102(17), (18), and (19), means the "Nursing:Scope and Standards of Practice", 2003, published by the American Nurses Association, which is hereby adopted and incorporated by reference, or as established by the professional community.

(19) "Licensure by equivalency" as used in these rules means licensure as a licensed practical nurse after successful completion of course work in a registered nurse program which meets the criteria established in Section R156-31b-601.

(20) "LPN" means a licensed practical nurse.

(21) "NLNAC" means the National League for Nursing Accrediting Commission.

(22) "NCLEX" means the National Council Licensure Examination of the National Council of State Boards of Nursing.

(23) "Non-approved education program" means any foreign nurse education program.

(24) "Other specified health care professionals", as used in Subsection 58-31b-102(12), who may direct the licensed practical nurse means:

- (a) advanced practice registered nurse;
- (b) certified nurse midwife;
- (c) chiropractic physician;
- (d) dentist;
- (e) osteopathic physician;
- (f) physician assistant;
- (g) podiatric physician;
- (h) optometrist;
- (i) certified registered nurse anesthetist.

(25) "Parent-program", as used in Section R156-31b-607, means a nationally accredited, Board of Nursing approved nursing education program that is providing nursing education (didactic, clinical or both) to a student and is responsible for the education program curriculum, and program and student policies.

(26) "Patient surrogate", as used in Subsection R156-31b-502(4), means an individual who has legal authority to act on behalf of the patient when the patient is unable to act or decide for himself,

including a parent, foster parent, legal guardian, or a person designated in a power of attorney.

(27) "Personal assistance and care", as used in Subsection 58-31b-102(11), means acts or practices by an individual to personally assist or aid another individual in activities of daily living. These activities do not include those services provided by physical therapy, occupational therapy, or recreational therapy aides/assistants.

(28) "Postsecondary school", as used in Section R156-31b-607, means a program registered and in good standing with the Utah Department of Commerce, Division of Consumer Protection, that offers coursework to individuals who have graduated from high school or have been awarded a GED.

(29) "Psychiatric mental health nursing specialty", as used in Subsection 58-31b-302(3)(g), includes psychiatric mental health nurse specialists and psychiatric mental health nurse practitioners.

(30) "RN" means a registered nurse.

(31) "Supervision" in Section R156-31b-701 means the provision of guidance or direction, evaluation and follow up by the licensed nurse for accomplishment of a task delegated to unlicensed assistive personnel or other licensed individuals.

(32) "Supervisory clinical faculty", as used in Section R156-31b-607, means one or more individuals employed by an approved nursing education program who meet the accreditation and Board of Nursing specific requirements to be a faculty member and are responsible for the overall clinical experiences of nursing students and may supervise and coordinate clinical mentors/preceptors who provide the actual direct clinical experience.

(33) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 31b, is further defined in Section R156-31b-502.

#### **R156-31b-702. Scope of Practice.**

(1) The lawful scope of practice for an RN employed by a department of health shall include implementation of standing orders and protocols, and completion and providing to a patient of prescriptions which have been prepared and signed by a physician in accordance with the provisions of Section 58-17[a]b-620.

(2) An APRN who chooses to change or expand from a primary focus of practice must be able to document competency within that expanded practice based on education, experience and certification. The burden to demonstrate competency rests upon the licensee.

(3) An individual licensed as either an APRN or a CRNA may practice within the scope of practice of a RN under his APRN or CRNA license.

(4) An individual licensed in good standing in Utah as either an APRN or a CRNA and residing in this state, may practice as an RN in any Compact state.

#### **R156-31b-703. Generally Recognized Scope of Practice of a LPN.**

In accordance with Subsection 58-31b-102(17), the LPN practicing within the generally recognized scope of practice of a LPN practices as follows:

(1) As related to professional accountability:

(a) practices within the legal boundaries for practical nursing through the scope of practice authorized in statute and rule;

(b) demonstrates honesty and integrity in nursing practice;

(c) bases nursing decisions on nursing knowledge and skills, the needs of patients/clients;

(d) accepts responsibility for individual nursing actions, competence, decisions and behavior in the course of practical nursing practice; and

(e) maintains continued competence through ongoing learning and application of knowledge in the client's interest.

(2) Responsibilities for nursing practice implementation:

(a) conducts a focused nursing assessment;

(b) plans for episodic nursing care;

(c) demonstrates attentiveness and provides patient/client surveillance and monitoring;

(d) assists in identification of client needs;

(e) seeks clarification of orders when needed;

(f) demonstrates attentiveness and provides observation for signs, symptoms and changes in client condition;

(g) assists in the evaluation of the impact of nursing care, and contributes to the evaluation of patient/client care;

(h) recognizes client characteristics that may affect the patient's/client's health status;

(i) obtains orientation/training competency when encountering new equipment and technology or unfamiliar care situations;

(j) implements appropriate aspects of client care in a timely manner;

(i) provides assigned and delegated aspects of patient's/client's health care plan;

(ii) implements treatments and procedures; and

(iii) administers medications accurately;

(k) documents care provided;

(l) communicates relevant and timely client information with other health team members including:

(i) patient/client status and progress;

(ii) patient/client response or lack of response to therapies;

(iii) significant changes in patient/client condition; or

(iv) patient/client needs;

(m) participates in nursing management;

(i) assigns nursing activities to other LPNs;

(ii) delegates nursing activities for stable patients/clients to unlicensed assistive personnel;

(iii) observes nursing measures and provides feedback to nursing manager; and

(iv) observes and communicates outcomes of delegated and assigned activities;

(n) takes preventive measures to protect patient/client, others and self;

(o) respects patient's/client's rights, concerns, decisions and dignity;

(p) promotes safe client environment;

(q) maintains appropriate professional boundaries; and

(r) assumes responsibility for own decisions and actions.

(3) Responsibilities as a member of an interdisciplinary health care team:

(a) functions as a member of the health care team, contributing to the implementation of an integrated health care plan;

(b) respects client property and the property of others; and

(c) protects confidential information unless obligated by law to disclose the information.

**R156-31b-704. Generally Recognized Scope of Practice of a RN.**

In accordance with Subsection 58-31b-102(18), the RN practices within the generally recognized scope of practice of a RN practices as follows:

(1) As related to professional accountability:

(a) practices within the legal boundaries for nursing through the scope of practice authorized in statute and rules;

(b) demonstrates honesty and integrity in nursing practice;

(c) bases professional decisions on nursing knowledge and skills, the needs of patients/clients;

(d) accepts responsibility for judgments, individual nursing actions, competence, decisions and behavior in the course of nursing practice; and

(e) maintains continued competence through ongoing learning and application of knowledge in the patient's/client's interest.

(2) Responsibility for nursing practice implementation:

(a) conducts a comprehensive nursing assessment;

(b) detects faulty or missing patient/client information;

(c) applies nursing knowledge effectively in the synthesis of the biological, psychological and social aspects of the patient's/client's condition;

(d) uses this broad and complete analysis to plan strategies of nursing care and nursing interventions that are integrated within the patient's/client's overall health care plan;

(e) provides appropriate decision making, critical thinking and clinical judgment to make independent nursing decisions and identification of health care needs;

(f) seeks clarification of orders when needed;

(g) implements treatments and therapy, including medication administration, delegated medical and independent nursing functions;

(h) obtains orientation/training for competence when encountering new equipment and technology or unfamiliar situations;

(i) demonstrates attentiveness and provides client surveillance and monitoring;

(j) identifies changes in patient's/client's health status and comprehends clinical implications of patient/client signs, symptoms and changes as part of expected and unexpected patient/client course or emergent situations;

(k) evaluates the impact of nursing care, the patient's/client's response to therapy, the need for alternative interventions, and the need to communicate and consult with other health team members;

(l) documents nursing care;

(m) intervenes on behalf of patient/client when problems are identified and revises care plan as needed;

(n) recognizes patient/client characteristics that may affect the patient's/client's health status; and

(o) takes preventive measures to protect patient/client, others and self.

(3) Responsibility to act as an advocate for patient/client:

(a) respects the patient's/client's rights, concerns, decisions and dignity;

(b) identifies patient/client needs;

(c) attends to patient/client concerns or requests;

(d) promotes safe patient/client environment;

(e) communicates patient/client choices, concerns and special needs with other health team members regarding:

(i) patient/client status and progress;

(ii) patient/client response or lack of response to therapies; and

(iii) significant changes in patient/client condition;

(f) maintains appropriate professional boundaries;

(g) maintains patient/client confidentiality; and

(h) assumes responsibility for own decisions and actions.

(4) Responsibility to organize, manage and supervise the practice of nursing:

(a) assigns to another only those nursing measures that fall within that nurse's scope of practice, education, experience and competence or unlicensed person's role description;

(b) delegates to another only those nursing measures which that person has the necessary skills and competence to accomplish safely;

(c) matches patient/client needs with personnel qualifications, available resources and appropriate supervision;

(d) communicates directions and expectations for completion of the delegated activity;

(e) supervises others to whom nursing activities are delegated or assigned by monitoring performance, progress and outcome, and assures documentation of the activity;

(f) provides follow-up on problems and intervenes when needed;

(g) evaluates the effectiveness of the delegation or assignment;

(h) intervenes when problems are identified and revises plan of care as needed;

(i) retains professional accountability for nursing care as provided;

(j) promotes a safe and therapeutic environment by:

(i) providing appropriate monitoring and surveillance of the care environment;

(ii) identifying unsafe care situations; and

(iii) correcting problems or referring problems to appropriate management level when needed; and

(k) teaches and counsels patient/client families regarding health care regimen, which may include general information about health and medical condition, specific procedures and wellness and prevention.

(5) Responsibility as a member of an interdisciplinary health care team:

(a) functions as a member of the health care team, collaborating and cooperating in the implementation of an integrated patient/client-centered health care plan;

(b) respects patient/client property, and the property of others; and

(c) protects confidential information.

(6) As chief administrative nurse:

(a) assures that organizational policies, procedures and standards of nursing practice are developed, kept current and implemented to promote safe and effective nursing care;

(b) assures that the knowledge, skills and abilities of nursing staff are assessed and that nurses and nursing assistive personnel are assigned to nursing positions appropriate to their determined competence and licensure/certification/registration level;

(c) assures that competent organizational management and management of human resources within the nursing organization are established and implemented to promote safe and effective nursing care; and

(d) assures that thorough and accurate documentation of personnel records, staff development, quality assurance and other aspects of the nursing organization are maintained.

(7) When functioning in a nursing program educator (faculty) role:

(a) teaches current theory, principles of nursing practice and nursing management;

(b) provides content and clinical experiences for students consistent with statutes and rules;

(c) supervises students in the provision of nursing services; and

(d) evaluates student scholastic and clinical performance with expected program outcomes.

**KEY: licensing, nurses**

**~~December 21, 2004~~2005**

**Notice of Continuation June 2, 2003**

**58-31b-101**

**58-1-106(1)(a)**

**58-1-202(1)(a)**



**Governor, Planning and Budget, Chief  
Information Officer**

**R365-300**

**Organization and Accountability for the  
Security of State Information Resources**

**NOTICE OF PROPOSED RULE**

(New Rule)

DAR FILE NO.: 27597

FILED: 12/22/2004, 07:28

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This new rule re-establishes the State Information Security Committee (SISC) in rule, including membership and responsibilities.

SUMMARY OF THE RULE OR CHANGE: This rule formally defines the role and responsibilities of the Chief Information Security Officer within Information Technology Services (ITS), and the SISC.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 63D-1a-305 and 63-46a-3

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: These functions currently exist in operations. This proposed new rule will have no budget impact.

❖ LOCAL GOVERNMENTS: Local government is not affected by this rule. Therefore, there is no anticipated cost or savings to local government.

❖ OTHER PERSONS: This rule applies to executive branch agencies. No other person will be impacted.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The roles implemented by this rule will have no compliance cost impact. These functions currently exist in operations.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Security is one of the most important issues we must deal with across the enterprise. The establishment of the SISC will help guide security policy for the State.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

GOVERNOR  
PLANNING AND BUDGET,  
CHIEF INFORMATION OFFICER  
Room 116 STATE CAPITOL  
350 N STATE ST  
SALT LAKE CITY UT 84114-1103, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Randy Hughes at the above address, by phone at 801-537-9071, by FAX at 801-538-1547, or by Internet E-mail at randyhughes@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 02/14/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 02/15/2005

AUTHORIZED BY: Val Oveson, Chief Information Officer

**R365. Governor, Planning and Budget, Chief Information Officer.**

**R365-300. Organization and Accountability for the Security of State Information Resources.**

**R365-300-1. Purpose.**

Define organization and accountability related to Security of information resources for the State of Utah.

The state of Utah's electronic information resources are vital assets, which require appropriate safeguards. Computer systems, networks, and data are vulnerable to a variety of threats. These threats have the potential to compromise the integrity, availability, and confidentiality of the information.

Effective security management programs must be employed to appropriately eliminate or mitigate the risks posed by potential threats to state information resources. Measures shall be taken to protect these resources against unauthorized access, disclosure, modification, or destruction, whether accidental or deliberate.

**R365-300-2. Authority.**

This rule is issued by the Chief Information Officer under the authority of Section 63D-1a-305 of the Information Technology Act, and Section 63-46a-3 of the Utah Rulemaking Act, Utah Code.

**R365-300-3. Definitions.**

(1) "Confidential Information" means information that is protected from disclosure under the provisions of the Government Records and Management Act (GRAMA) or other applicable state or federal laws.

(2) "Mission Critical Information" means information that is defined by any data owner to be essential to its function, and its loss or untimely restoration would result in severe detrimental impact.

(3) "Owner" means an agency, which has statutory authority over information or data.

(4) "Custodian" means an agency, which provides operational support for an information system. The custodian has responsibility for implementing owner-defined controls and access privileges.

**R365-300-4. Scope of Application.**

(1) All agencies of the executive branch of state government including its administrative sub-units, except the State Board of Education, the Board of Regents, and institutions of higher education, are included within the scope of this rule.

**R365-300-5. Responsibilities and Authorities.**

(1) The CIO, in cooperation with the Director of Information Technology Services, shall designate a staff member to serve in the role of the Chief Information Security Officer (CISO) for the State.

(2) The CISO shall have the following responsibilities:

(a) Promote sharing of security information and alerts among state agencies;

(b) Serve as the central point of contact on information security issues;

(c) Create, maintain, and oversee the implementation of an information security strategy, which is approved by the CIO;

(d) Review or recommend policy changes to address compliance with state and federal statutory, regulatory and contractual requirements;

(e) Develop and administer guidelines, standards, and procedures on system and information classification and ownership;

(f) Develop, establish, and maintain standards, procedures and guidelines to promote information security;

(g) Provide at least quarterly, a written information security report to the Director of ITS and the Chief Information Officer;

(2) The Executive Director of each department or highest ranking official within an agency shall designate one person to serve as the agency information security officer (AISO) within 30 days following the effective date of this rule.

(3) A State Information Security Committee (SISC) is created.

(a) The SISC shall be composed of the following eight(8) representatives:

(i) The CISO;

(ii) The CIO, or designee;

(iii) Three (3) members from the State IT Council selected by the CIO; one member will be rotated each year;

(iv) Three(3) members from The Utah Security Users Group (USUG) selected by the CIO to three year terms; One member shall rotate each year.

(b) The CISO, or designee, shall chair the SISC.

(c) ITS shall provide staff support to the SISC.

(d) The SISC shall perform the following duties:

(i) Promote sharing of security information and alerts among state agencies;

(ii) Provide a mechanism for reviewing and providing coordination for resolving security issues among state agencies;

(iii) Coordinate statewide efforts for development of security rules, policies, and guidelines;

(iv) Assist agencies in the development of written security plans and incident management procedures;

(v) Identify opportunities to improve security operations and best practices across the enterprise;

(vi) Establish an overall statewide security plan and incident response plan;

(vii) Submit an annual report on state information security to the CIO no later than September 30 of each year;

**R365-300-7. Rule Compliance Management.**

A state executive branch agency's executive director, upon becoming aware of a violation of this rule, shall institute measures

designed to enforce this rule. The CIO may, where appropriate, monitor compliance and report to an agency's executive director any findings or violations of this rule.

**KEY: agency information security officer, chief information security officer, state information security committee**

**2005**

**63D-1a-305**

**63-46a-3**

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## Health, Health Care Financing, Coverage and Reimbursement Policy

# R414-507

## Medicaid Long Term Care Managed Care

### NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE No.: 27629

FILED: 12/30/2004, 14:25

### RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rulemaking incorporates the design and operation requirements of the Medicaid Long Term Care (LTC) Managed Care program. Medicaid recipients eligible for this program may choose to receive care in the community as an alternative to nursing care facilities. It operates as a demonstration project to determine the feasibility of the program for residents in nursing care facilities. The program design and operation requirements describe the formal contract terms contained in the contract between the Division of Health Care Financing and managed care organizations. Thus, this rulemaking presents the major elements of the statewide program design that are an ongoing component of the Medicaid LTC system.

SUMMARY OF THE RULE OR CHANGE: This is a new rule for the LTC Managed Care Program that formalizes the long term care managed care program structure. Up to this point, it has been a demonstration project operated through the Medicaid managed care contracts.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-1-5, and Subsection 26-18-3(2)(a)

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: There are no anticipated costs or savings to the state because reimbursement rates are equivalent in both nursing home and LTC managed care.
- ❖ LOCAL GOVERNMENTS: There is no budget impact to local governments as a result of this rulemaking because local governments do not provide the service.
- ❖ OTHER PERSONS: This rule does not change reimbursement or add additional requirements over what the providers currently provide under contract. Therefore, there are no costs or savings to providers. Medicaid recipients will

experience no change in coverage or services as a result of this rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs as a result of this program as it imposes no additional requirements.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rulemaking is necessary to incorporate the design and operation requirements of a Medicaid LTC Managed Care program into the administrative rules of the Division of Health Care Financing as it moves from a demonstration project to a statewide program. This program provides options to Medicaid recipients of Long Term Care and has a positive fiscal impact on those that provide care for these recipients in facilities other than nursing facilities. Providers of care in nursing care facilities will lose income if residents choose to receive care elsewhere. The Department is committed to pursuing policies that balance free market forces with efficiency and quality of care assurances and provide maximum choice to eligible recipients. Scott D. Williams, MD

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

HEALTH  
HEALTH CARE FINANCING,  
COVERAGE AND REIMBURSEMENT POLICY  
CANNON HEALTH BLDG  
288 N 1460 W  
SALT LAKE CITY UT 84116-3231, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Ross Martin or Craig Devashrayee at the above address, by phone at 801-538-6592 or 801-538-6641, by FAX at 801-538-6099 or 801-538-6099, or by Internet E-mail at [rmartin@utah.gov](mailto:rmartin@utah.gov) or [cdevashrayee@utah.gov](mailto:cdevashrayee@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 02/14/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 02/15/2005

AUTHORIZED BY: Scott D. Williams, Executive Director

### **R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**

#### **R414-507. Medicaid Long Term Care Managed Care.** **R414-507-1. Introduction and Authority.**

(1) The Medicaid LTC Managed Care program is designed to enable an adult Medicaid recipient who needs a level of care consistent with the need for services provided in a nursing facility to receive an individualized package of services to maintain health and safety in a variety of appropriate service settings.

(2) This rule is authorized by Utah Code Section 26-18-3. This program is authorized by 42 USC 1396n(a) and is a component of the Utah Medicaid State Plan. As provided in 42 USC 1396n(a), the

state is not out of compliance with the requirements of paragraphs (1), (10) or (23) of 42 USC 1396a solely because the state has entered into a contract with an organization that has agreed to provide care and services in addition to those offered under the State Plan to individuals eligible for medical assistance. The Department may enter into one or more contracts with Medicaid managed care organizations for the operation of projects under the LTC Managed Care program.

#### **R414-507-2. Definitions.**

The definitions in R414-1 apply to this rule. In addition:

(1) "Care Coordination" is a process where representatives of Medicaid programs serving an individual, and the individual's attending physician when possible, participate in the exchange of information and service planning to assure that the individual's health and welfare needs are identified, develop a comprehensive service plan, and implement the service plan to achieve integration of care across programs.

(2) "Long Term Care" (LTC) means a comprehensive array of services provided to persons of all ages who are experiencing chronic functional limitations due to illness, disability or injury.

(3) "LTC Managed Care Project Contractor" is a Medicaid Primary Inpatient Health Plan or a Medicaid Prepaid Mental Health Plan that has contracted with the Medicaid agency to provide a long term care service package as part of its array of covered services.

#### **R414-507-3. Client Eligibility Requirements.**

(1) Participation in the LTC Managed Care program is limited to individuals who:

(a) have been in a medical institution for at least 30 consecutive days as a Medicare or Medicaid patient; or

(b) have been in a Medicaid 1915(c) Home and Community-Based Services waiver for at least 30 consecutive days.

(2) A client must meet all financial eligibility requirements for institutional care.

(3) Consistent with the provisions of 42 USC 1396n(a), individuals enrolled in the LTC Managed Care program remain eligible under 42 USC 1396a(10)(A), regardless of the setting in which the services of the program are delivered.

#### **R414-507-4. Program Access Requirements.**

(1) Participation in the LTC Managed Care program is limited to Medicaid recipients who:

(a) require the level of care provided in a nursing facility as determined under in R414-502 of the Utah Administrative Code;

(b) are age 18 or older; and

(c)(i) reside in a Medicaid certified nursing facility on an extended stay basis;

(ii) are on an inpatient status in a licensed Utah medical institution other than a Medicaid certified nursing facility and have been designated by the attending physician for discharge to a nursing facility for an extended stay of 30 days or more; or

(iii) are enrolled in a Medicaid 1915c Home and Community-Based Services waiver as an alternative to nursing facility placement and have been determined by the state to require disenrollment from the 1915c Home and Community-Based Services waiver due to health and welfare concerns.

(2) In the case of acute care hospitals, specialty hospitals, and Medicare skilled nursing facilities, participation is limited to persons who are admitted for the purpose of receiving a medical, non-

psychiatric level of care more acute than the Medicaid nursing facility level of care provided in R414-502.

(3) Persons who meet the intensive skilled level of care as provided in R414-502 are not eligible for participation in the LTC Managed Care program.

(4) Persons who meet the level of care criteria for admission to an Intermediate Care Facility for the Mentally Retarded as provided in R414-502 are not eligible for participation in the LTC Managed Care program.

(5) Residents of a nursing facility who have selected the Medicare or Medicaid hospice benefit are eligible to participate in the LTC Managed Care program only if enrollment in the LTC Managed Care program results in the individual's receiving continued hospice care in his or her own home or the home of a family member or personal caregiver.

#### **R414-507-5. Service Coverage.**

(1) An enrollee in the LTC Managed Care program receives medical, mental health, and institutional and home and community-based LTC services to address the individual's health and safety needs.

(2) The LTC Managed Care program provides the Medicaid State Plan nursing facility service, care coordination, and home and community based long term care services.

(3) The LTC Managed Care Project Contractor must:

(i) use the InterRAI Minimum Data Set- HOME CARE assessment instrument and other clinical assessments necessary to identify the individual's needs;

(ii) develop, in consultation with the individual and the individual's attending physician when possible, a comprehensive written service plan that:

(A) addresses identified needs in an appropriate setting;

(B) coordinates LTC Managed Care program benefits between all service providers; and

(iii) assure implementation of the comprehensive written service plan.

(4) The LTC Managed Care Project Contractor may not pay for LTC services provided by persons who otherwise have a legal responsibility for providing the care, such as a spouse or legally appointed guardian.

(5) A resident of a nursing facility who is admitted from a home or community setting is not eligible for the LTC Managed Care program until a 90-day continuous stay has been completed in a Utah nursing facility or a Utah Medicaid enrolled nursing facility in an adjoining state.

(6) A participant in a Medicaid 1915c Home and Community-Based Services Waiver who is eligible for the LTC Managed Care program in accordance with R414-507-4(1)(e) may enroll in the LTC Managed care program without completing a stay in a Utah nursing facility if the state determines the LTC Managed care program can meet the health and safety needs of the individual in a community setting at the time of enrollment.

(7) An individual residing in a Medicare skilled unit is not eligible to enroll in the LTC Managed Care program until the full available Medicare Part A benefit for skilled nursing care is exhausted.

(8) An individual enrolled in the LTC Managed Care program must exhaust all available Medicare Part B benefits and other third party benefits before utilizing comparable services through the LTC Managed care program.

**R414-507-6. Freedom of Choice.**

(1) Upon enrollment in the LTC Managed Care program, the individual may choose among the LTC Managed Care Project Contractors serving in the individual's desired service area.

(2) Upon selecting the LTC Managed Care Project Contractor, the individual is bound by the requirements of the LTC Managed Care program and the Department-approved policies and procedures adopted by the LTC Managed Care Project Contractor for operation of the program.

(3) A LTC Managed Care program enrollee may disenroll from the program at any time with or without cause. A voluntary disenrollment is effective when the enrollee has notified the Department and the Department issues a new Medicaid card that indicates disenrollment on the eligibility transmission.

(4) An enrollee of the LTC Managed Care program who desires to change LTC Managed Care Project Contractors is subject to the provisions of R414-140.

**R414-507-7. Evaluation and Reevaluation of Nursing Facility Level of Care.**

The Department, or its designee, initially evaluates and periodically reevaluates at least annually each LTC Managed Care enrollee to determine whether the individual meets the admission criteria of R414-502.

**R414-507-8. Reimbursement for Services.**

(1) Each LTC Managed Care Project Contractor receives a monthly pre-payment per enrollee in an amount established by the Department at the beginning of each state fiscal year.

(2) The LTC Managed Care Project Contractor must submit a financial report on a Department-approved form for the fiscal year reporting period, in accordance with the particular project contract requirements.

(3) After the conclusion of each fiscal year, the Department conducts a cost settlement with each LTC Managed Care Project Contractor. To conduct the cost settlement, the Department first reviews LTC Managed Care Project Contractor expense records and documentation to determine the amount of allowable program expenses. The Department then compares the allowable program expense amount with the aggregate amount of the prepayments the Department paid the LTC Managed Care Project Contractor during the prior fiscal year. The Department also calculates any financial incentives for which the LTC Managed Care Project Contractor qualifies. Based on these calculations, the Department determines an amount due to or owed by the LTC Managed Care Project Contractor.

**R414-507-9. Cost Neutrality.**

(1) Cost-effectiveness of the LTC Managed Care program is measured as an aggregate of all enrollees over time. The Department's total expenditures for the LTC Managed Care program and other Medicaid services provided to individuals enrolled in the LTC Managed Care program, shall in any given year, not exceed the amount that would be incurred by the Medicaid program for a comparable population in a nursing facility.

(2) The LTC Project Contractor must meet each enrollee's assessed needs regardless of the individual's cost or complexity of care. The LTC Project Contractor cannot place an expenditure cap on any enrollee.

**R414-507-10. New Project and Project Expansion Proposals.**

(1) Organizations interested in partnering with the Department of Health in a new LTC Managed Care project or to expand the geographical area served by an existing LTC Managed Care project must submit a written project proposal demonstrating the feasibility of the project for consideration by the Department.

(2) The written project proposal must include as a minimum the following topics to demonstrate the added value that the project will contribute to the LTC Managed Care program and the long term viability of the project for the specific geographical area to be served.

(a) project purpose, goals and objectives;

(b) project organizational structure;

(c) a description of services and supports to be provided and the general sequence in which the various elements of the long term care array will be developed;

(d) a description of the residential and work settings where services will be delivered;

(e) a description of the geographical area to be covered;

(f) a project development and implementation schedule;

(g) project quarterly growth projections and estimated maximum capacity;

(h) a description of the target populations;

(i) a description of the referral network to be accessed to identify potential project participants and the outreach approaches to be utilized to educate the referral network about the project;

(j) a description of the specific performance indicators to guide the progress of the project and to measure the level of achievement of stated goals and objectives;

(k) a description of long term care best practices incorporated into the project, that includes a self-directed approach to service planning and budgeting for enrollees who have the ability to be actively involved in their health care decisions;

(l) a financial pro forma statement for the project; and

(m) a description of other publicly financed programs that the project contractor or partners are involved with that present opportunities to integrate multiple program activities and strengthen common priorities or that pose potential conflicting priorities between programs and how the contributing and conflicting issues will be managed.

(3) Each proposal must include sufficient information to allow the Department to evaluate the project's ability to operate in accordance with R414-507, to protect the health and safety of persons served through an alternative delivery approach to nursing facility care, and to maintain financial stability.

(4) The Department will issue a written notice authorizing or denying a proposed project within 90 days of receipt of the written proposal. If the Department issues a written request for additional information, the additional information must be submitted within 30 days of the date of the Department's request and the maximum review time frame is extended to 120 days.

**KEY: Medicaid**

**2005**

**26-1-5**

**26-18-3**



Human Services, Services for People  
with Disabilities  
**R539-2**  
Service Coordination

**NOTICE OF PROPOSED RULE**

(New Rule)  
DAR FILE NO.: 27626  
FILED: 12/30/2004, 09:36

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This new rule is submitted after a comprehensive revision of the Division's administrative rules. The rule clarifies the internal processes within the Division once eligibility is determined. A repeal of the current rule will be filed at a later date.

**SUMMARY OF THE RULE OR CHANGE:** The rule clarifies the criteria for placing persons eligible for services onto the statewide waiting list. Changes also include clarification of the Person-Centered Planning process and Quality Management procedures. Conflict resolution procedures and the person's right to request a new Support Coordinator or Provider were also added.

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Sections 62A-5-102 and 62A-5-103

**ANTICIPATED COST OR SAVINGS TO:**

- ❖ **THE STATE BUDGET:** There will be no anticipated cost. The new rule does not reflect any change in methodology within the Division. These procedures are already in practice and will not require any additional funding.
- ❖ **LOCAL GOVERNMENTS:** No local government funding is used. Therefore, there is no cost to local governments.
- ❖ **OTHER PERSONS:** If a person requests a change in providers, both the old provider and new provider are required to assist in this transition through coordination meetings and paperwork. These activities are considered part of the rate paid to providers. There is no additional cost to other persons other than their time to participate in the process of the transition that they requested.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** People in services are encouraged to take an active part in the planning process and have a voice in their choice of services.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** Service providers may lose or gain funding due to the movement of people among providers. No other fiscal impacts are identified beyond service providers under contract with the Division.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

HUMAN SERVICES  
SERVICES FOR PEOPLE WITH DISABILITIES  
Room 411  
120 N 200 W

SALT LAKE CITY UT 84103-1500, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
Suzie Totten at the above address, by phone at 801-538-4197, by FAX at 801-538-4279, or by Internet E-mail at stotten@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 02/14/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 02/15/2005

AUTHORIZED BY: Robin Arnold-Williams, Executive Director

**R539. Human Services, Services for People with Disabilities.  
R539-2. Service Coordination.**

**R539-2-1. Purpose.**

(1) The purpose of this rule is to provide standards for the Division service system, including planning, developing and managing an array of services for Persons with disabilities and their families throughout the state as required by Subsection 62A-5-103(1).

**R539-2-2. Authority.**

(1) This rule establishes standards as required by Subsection 62A-5-103(1).

**R539-2-3. Definitions.**

(1) Terms used in this rule are defined in Section 62A-5-101 and R539-1-3.

(2) In addition:

(a) "Quality Assurance" means the Family, Provider, and Division management's role to assure accountability in areas of fiscal operations, health, safety, and contract compliance.

(b) "Quality Improvement" means the Provider's role to evaluate and improve the internal delivery of services.

(c) "Quality Enhancement" means the Division and the Team members' role in supporting a Person to experience personal life satisfaction in accordance with the Person's preferences.

**R539-2-4. Waiting List.**

(1) Pursuant to Subsection 62A-5-102(3), the Division shall determine a Person's eligibility for service, followed by a determination of that Person's priority relative to others who are also eligible. Each region shall use a standardized Needs Assessment to score and prioritize the Person's level of need. Persons with the highest scores shall receive support first. The Support Coordinator shall assess with the Person the array of services that may be needed. If funding is not immediately available, the Person shall be placed on a waiting list for support. Persons who have been determined eligible for the Division's Medicaid Waivers can choose to wait for Division Support services or seek services available through Medicaid in an approved facility.

(2) If the Person requires, and could use, support services on the day of intake, the Person has an immediate need; otherwise, the Person has a future need.

(3) A Needs Assessment Form 2-2 shall be completed for all Persons with an immediate need for support services. The Needs

Assessment calculates the score of each Person by using the following criteria:

- (a) severity of the disabling condition;
- (b) needs of the Person and/or family;
- (c) length of time on the waiting list, if applicable;
- (d) appropriate alternatives available; and
- (e) other factors determined by the Region to reflect accurately on the Person's need:
  - (i) family composition;
  - (ii) skills and stress of primary caregiver;
  - (iii) finances and insurances;
  - (iv) ability to be self-directing;
  - (v) special medical needs;
  - (vi) problem behaviors;
  - (vii) protective service issues;
  - (viii) resources/supports needed;
  - (ix) projected deterioration issues; and
  - (x) time on immediate need waiting list.

(4) The Region Needs Assessment Committee determines the Person's score, rank orders the scores, and enters the Person's name and score on the statewide waiting list.

(5) A Person's ranking may change if the Person's needs change or as Needs Assessments are completed for new Applicants.

(6) No age limitations apply to a Person placed on the waiting list for community living support or family support.

#### **R539-2-5. Person-Centered Process.**

(1) The Division supports Person-Centered Planning, which includes assessing, planning, implementing, and evaluating. This process shall have an individualized focus and incorporates the principles of Person-Centered Planning, self-determination, informed choice, and equity. Input from the Person and the Person's Team should guide and direct this process.

(a) The Person's Team shall work with the Person to identify goals.

(i) The Person receiving supports determines the membership of the Team, which shall include the Support Coordinator.

(ii) The Team meets at least annually (within twelve months of last meeting), or more often as the Person or other members of the Team determine necessary.

(b) The Person, Provider, and Family shall assess, plan, implement, and evaluate goals and supports for which they are responsible, as agreed upon and listed on Division Form 1-16 in the planning meeting.

(c) The Team shall decide the level of detail required to describe the actions involved in the assessing, planning, implementing, and evaluating needs for the supports based on the experience and expertise of the staff providing the Person's supports. The use of the philosophical Person-Centered Planning approach shall be demonstrated and documented in the Person's file.

(d) Any interested party who believes that Person-Centered Planning is not being implemented as outlined or receives a request from the Person, should contact the Support Coordinator immediately to resolve the issue informally, as per R539-2-8 Conflict Resolution, and, if necessary, through the administrative hearing process outlined in R539-3-8 Notice of Agency Action and Administrative Hearings.

#### **R539-2-6. Entry Into and Movement Within Service System.**

(1) The Division shall assure that an appropriate choice of supports and Providers exist for Persons entering or moving within the support system in accordance with Subsections 62A-5-103(1)

and 62A-5-103(12). The Division shall coordinate, approve, and oversee all out-of-home placements.

(2) Entry into Division-funded supports:

(a) Once a Person's application for waiver services is processed by the Division, the Person is referred to the local financial eligibility office.

(b) Prior to the provision of community living supports, a Person may be required to complete a medical examination and, if under the age of 18, provide a current immunization record.

(c) Admission to Division programs from a nursing facility will be coordinated by the Region office with the Person, the nursing facility social worker, the Support Coordinator, and the prospective Provider.

(d) The Division shall provide Persons with a choice of Providers by:

(i) sending Providers notice and invitation to submit offers to provide services via use of Division Form 1-6; and

(ii) assisting the Person to make an informed choice of Provider.

(e) Interested Providers may schedule and coordinate a service entry meeting that involves the Person, the Representative, Support Coordinator, and invited guests, (i.e., Developmental Center staff, school representative, and Division staff). The meeting should be held at the prospective site of placement whenever possible.

(f) The Provider shall submit an acceptance or denial letter within ten business days of the service entry meeting to the Support Coordinator and the Person. An acceptance letter shall include a written description of the following:

(i) services to be provided;

(ii) location of the service;

(iii) name and address of the primary care physician, or other medical specialists, including, for example, neurologist or dentist;

(iv) a training and in-service schedule for the staff to meet with the Person;

(v) proposed date services will begin; and

(vi) agreed upon rate and level of support.

(g) The physical move of the Person shall be the responsibility of the Provider who is accepting the Person.

(h) The Division shall send the Person's information to the Provider five business days prior to the move.

(3) Any Team Member may initiate a request to change Provider or Developmental Center residence by asking the Support Coordinator to arrange a meeting.

(4) If a Person requests a change of Provider, the Support Coordinator shall arrange a discharge meeting that provides a ten-business-day written notice to the Person, present Provider, Support Coordinator, and receiving Provider.

(a) The present Provider may request the opportunity to make changes in the existing relationship to address the concerns that initiated the discharge meeting.

(b) The Region Director shall make the final decision concerning the discharge if the parties cannot come to agreement.

(5) A Provider initiated request for discharge of a Person shall require 90 calendar days prior notification to the Person and the Division.

(6) Emergency Services Management Committee (ESMC):

(a) An Emergency Services Management Committee chairperson shall be appointed by the Division Director. Membership shall include:

(i) Division Specialists;

(ii) a representative from each Region who is skilled in crisis intervention and knowledgeable of local resources;

(iii) a representative from the Developmental Center; and

(iv) others as appointed by the Division Director.

(b) The Emergency Services Management Committee shall ensure that Persons are placed in the least restrictive most appropriate living situation as per Sections 62A-5-302 through 62A-5-312 and Subsection 62A-5-402(2)(a). Exceptions to the statute requiring children under age 11 to live only in family-like environments, as per Section 62A-5-403, require Emergency Services Management Committee review and recommendation to the Division Director for final written approval.

#### **R539-2-7. Quality Management Procedures.**

(1) The Division will oversee the three distinct functional roles of quality management, which are Quality Assurance, Quality Improvement, and Quality Enhancement.

(a) Necessary quality assurances are specified by contract with the Division. The Division may work with other offices and bureaus of the Department of Human Services and the Department of Health to assure quality.

(b) Providers are responsible to develop and implement an internal quality management system, which shall:

(i) Evaluate the Provider's programs; and

(ii) Establish a system of self-correcting feedback.

(c) The implementation of the Person's Action Plan shall be designed to enhance the Person's life. The Person and Person's Team shall:

(i) Identify and document the Person's preferences;

(ii) Plan how to support the Person's life satisfaction; and

(iii) Implement the plan with supports from the Division, such as:

(A) Technical Assistance, which involves training, mentoring, consultation, and referral through Division staff.

(B) Quality Enhancement Resource Brokerage, which involves identification and compilation of community resources, including other consumers and families, and referral to and prior approval of payment for these supports.

(C) Consumer empowerment, which involves rights education, leadership training.

(D) Team and System Process Enhancement, which involves facilitation and negotiation training, community education, and consumer satisfaction surveys.

(2) The Division shall evaluate the Person's satisfaction and statistical statewide system indicators of life enhancement.

(3) Division staff shall promote enhancement of the Person's life; support improvement efforts undertaken by Providers, Persons, and families; and assure accountability.

#### **R539-2-8. Request for New Support Coordinator.**

(1) A Person may request a new Support Coordinator by submitting a written request to the Region Office Supervisor.

#### **KEY: services, people with disabilities**

**2005**

**62A-5-102**

**62A-5-103**



## Human Services, Services for People with Disabilities **R539-3** Rights and Protections

### NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 27627

FILED: 12/30/2004, 10:46

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This new rule is submitted after a comprehensive revision of the division's administrative rules. The rule clarifies the rights of persons receiving Home and Community-Based services from the division. A repeal of the current rule will be filed at a later date.

**SUMMARY OF THE RULE OR CHANGE:** This rule clarifies the rights of persons relating to personal funds management services, access to personal property, privacy, and hospice care. Rights to administrative hearings for persons receiving non-waiver and waiver services are also clarified. The rule also outlines the responsibilities of the Provider Human Rights Committees and Division Human Rights Council.

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Sections 62A-5-102 and 62A-5-103

#### ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** There will be no anticipated cost. The new rule does not reflect any change in methodology within the Division. These procedures are already in practice and will not require any additional funding.

❖ **LOCAL GOVERNMENTS:** No local government funding is used. Therefore, there is no cost to local government.

❖ **OTHER PERSONS:** Providers are currently required to have Human Rights Committees and these activities are considered part of the rate paid to providers. There is no additional cost to other persons in obtaining access to these committees, in requesting administrative hearings, etc. other than their time in participating in these processes.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** This rule clarifies the rights and protections for persons receiving services in a Home and Community-Based setting. A person may lose rights due to the professional judgment of service providers and effective treatment as a condition to continuing services.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** This rule does not reflect a change in methodology within the division and the division's expectations of service providers. No fiscal impacts are identified.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

HUMAN SERVICES  
SERVICES FOR PEOPLE WITH DISABILITIES  
Room 411  
120 N 200 W  
SALT LAKE CITY UT 84103-1500, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Suzie Totten at the above address, by phone at 801-538-4197, by FAX at 801-538-4279, or by Internet E-mail at stotten@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 02/14/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 02/15/2005

AUTHORIZED BY: Robin Arnold-Williams, Executive Director

### **R539. Human Services, Services for People with Disabilities.**

#### **R539-3. Rights and Protections.**

##### **R539-3-1. Purpose.**

(1) The purpose of this rule is to support Persons in exercising their rights as Persons receiving funding from the Division. The procedures of this rule constitute the minimum rights for Persons receiving Division funded services and supports.

##### **R539-3-2. Authority.**

(1) This rule establishes procedures and standards for the protection of Persons' constitutional liberty interests as required by Subsection 62A-5-103(4)(b).

##### **R539-3-3. Definitions.**

(1) Terms used in this rule are defined in Section 62A-5-101 and R539-1-3.

##### **R539-3-4. Human Rights Committee.**

(1) This rule applies to the Division, Persons funded by the Division, Providers, Providers' Human Rights Committees, and the Division Human Rights Council.

(2) All Persons shall have access to a Provider Human Rights Committee with the exception of the following:

(a) Persons receiving physical disabilities services.

(b) Families using the Self-Administered Model.

(c) Persons receiving only family supports or respite.

(3) The Provider Human Rights Committee approves the services agencies provide relating to rights issues, such as rights restrictions and the use of intrusive behavior supports. In addition, the Committee provides recommendations relating to abuse and neglect prevention, rights training, and supporting people in exercising their rights.

(4) Any interested party may request that the rights of a Person be reviewed by a Provider Human Rights Committee by contacting the Person's Provider agency verbally or in writing.

(5) Any interested party may request an appeal of the Provider Human Rights Committee decision by sending a request to the

Division, 120 North 200 West #411, SLC UT 84103. The Division shall make a decision whether there will be a review and shall notify the Person, Provider, and Support Coordinator concerning the decision within eight business days. The notification shall contain a statement of the issue to be reviewed and the process and timeline for completing the review.

##### **R539-3-5. Representative Payee Services.**

(1) Unless a Person voluntarily signs the Division Voluntary Financial Support Agreement Form 1-3 or a Provider Human Rights Committee has approved restriction on the use and access to personal funds, the Person shall have access to and control over such funds.

(2) The Representative Payee shall follow all Social Security Administration requirements outlined in 20CFR416.601-665.

(3) The Division shall review Provider records for a sample of Representative Payee files on an annual basis.

(4) If the Department does not have guardianship or conservatorship and the Division has not been named as Representative Payee by the Social Security Administration, the Person may sign a Voluntary Financial Support Agreement, Division Form 1-3, allowing the Department to act as Representative Payee.

(5) If the Division is acting as the Representative Payee for a Person, the Division may initiate termination of a Representative Payee relationship through written notification to the Person and the funding agency.

(a) The Division shall initiate termination of a Representative Payee arrangement when:

(i) a Person with a voluntary arrangement requests termination of Representative Payee status;

(ii) a funding agency requests termination of Representative Payee status;

(iii) Person with a Representative Payee becomes ineligible for funding; or

(iv) a Person moves out of the service area.

##### **R539-3-6. Personal Property.**

(1) Restrictions to property that are implemented by the Division or Provider shall be part of a written plan or as an Emergency Behavior Intervention in accordance with Division Administrative Rule. Restrictions shall be approved by the Team and Provider Human Rights Committee.

##### **R539-3-7. Privacy.**

(1) Persons shall have privacy, including private communications (i.e. mail, telephone calls and private conversations), personal space, personal information, and self-care practices (i.e. dressing, bathing, and toileting).

(2) Restrictions to privacy that are implemented by the Division or Provider shall be part of a written plan and approved by the Team and Provider Human Rights Committee. Circumstances that require assistance in self-care due to functional limitations do not require a written plan.

##### **R539-3-8. Notice of Agency Action and Administrative Hearings.**

(1) Persons have the right to receive adequate written Notice of Agency Action and to present grievances about agency action by requesting a formal or informal administrative hearing in accordance with R497-100 for Persons receiving non-Waiver services, and R410-14 for Persons receiving Waiver services.

(2) Pursuant to Utah Code Annotated, Title 63, Chapter 46b, the Division shall notify a Person in writing before taking any agency action, such as changes in funding, eligibility, or services.

(3) At least 30 calendar days before the Division or the Region terminates or reduces a Person's services or benefits, the Division or Region shall send the Person a written Notice of Agency Action.

(4) The Notice of Agency Action shall comply with Subsection 63-46b-3(2)(a) and R497-100-4(2)(a).

(5) To assist a Person in requesting an administrative hearing, the Division or Region shall send the Person a Hearing Request Form 490S when the Division or Region sends the Notice of Agency Action Form 522.

(6) To request an informal hearing with the Department of Human Services for non-waiver services, the Person must file a Hearing Request Form 490S with the Division within 30 calendar days of the mailing date shown on the Notice of Agency Action Form 522.

(7) To request a formal hearing with the Department of Health for Waiver services, the Person must file the Medicaid Standard Hearing Request Form with the Division and Department of Health, Division of Health Care Finance within 30 calendar days of the mailing date shown on the Notice of Agency Action Form 522.

(8) This 30-day deadline for formal and informal hearings applies regardless of whether the Person also wishes to participate in the Division's conflict resolution process.

(a) If the Person files the Hearing Request within ten calendar days of the mailing date of the Notice of Agency Action, the Person's services shall continue unchanged during the formal or informal hearing process.

(b) If the Person files the Hearing Request Form between 11 and 30 calendar days after the mailing date of the Notice of Agency Action, the Person is entitled to an administrative hearing, but the Person's services and benefits shall be discontinued or reduced according to the Notice of Agency Action during the formal or informal hearing process.

(9) A Person may file a Request for Hearing Form for a formal or informal hearing and choose to still participate in the Division's conflict resolution process prior to the formal or informal hearing.

(10) If the Person requests an informal hearing and also chooses the conflict resolution process, the conflict resolution process must be completed before the informal hearing can begin, unless the Person submits a written request to the Division to end the conflict resolution process prematurely.

### **R539-3-9. Participation in Hospice Services.**

(1) Persons expected by their physicians to live fewer than six months have the right to pursue hospice services as their choice of end-of-life care. A Person who is expected by two physicians to live fewer than six months and who receives Division funding for services and supports may request to continue to receive their Division-funded services and supports while participating in hospice services.

(2) If a Person has not executed a Durable Power of Attorney for Health Care and is incapable of making an informed decision about hospice services or signing a Hospice Agreement, choices related to end-of-life care shall be made on behalf of the Person by the Team upon approval of the Provider Human Rights Committee unless a guardian has been appointed by the Court with the legal authority to make end-of-life decisions for the Person.

(3) If a Person receives Waiver services through the Division and elects the Medicaid hospice benefit and meets the program eligibility requirements in accordance with R414-14A-3, hospice

shall become the primary service delivery program, including the primary case management program, for the care of the Person. All other Medicaid programs serving the Person at the time of hospice election, including Waivers, shall coordinate with the hospice case management team to determine the full scope of services that shall be provided from that point forward.

(a) Pursuant to R414-14A-7(A), a Person can continue to receive Division services through the Waiver program that are necessary to prevent institutionalization, are not duplicative of services covered by the hospice benefit, and do not conflict with the hospice plan of treatment.

(b) The Medicaid hospice benefit shall determine the actual number of times a Person can revoke and re-elect hospice services, which hospice Providers and services are available, and which Waiver services may continue concurrently with hospice services.

(c) If the Division wishes to initiate disenrollment of a Medicaid-funded Person from the Waiver based on the Person's election of hospice services, it shall be considered an involuntary disenrollment and will be subject to review and approval by the Department of Health, Division of Health Care Finance.

### **KEY: people with disabilities, rights**

**2005**

**62A-5-102**

**62A-5-103**



## Labor Commission, Safety **R616-2-3** Safety Codes and Rules for Boilers and Pressure Vessels

### **NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 27616

FILED: 12/27/2004, 10:33

### **RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of the rule change is to adopt the Triennial Edition of American Society of Mechanical Engineers (ASME) 2004 Boiler and Pressure Vessel Codes and the National Board Inspection Code (NBIC) (NB-23).

SUMMARY OF THE RULE OR CHANGE: The purpose of the rule change is to adopt by reference the following: ASME Section I Rules for Construction of Power Boilers, published July 1, 2004; ASME Section IV Rules for Construction of Heating Boilers, published July 1, 2004; ASME Section VIII Rules for Construction of Pressure Vessels, published July 1, 2004; and ASME B31-1 Power Piping Rules for Pressure Piping, published August 16, 2004. The proposed rule also adopts by reference the NBIC (NB-23), issued December 31, 2004.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 34A-7-101 et seq.

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: ASME Sections I, IV, VIII, and B31.1 issued July 1, 2004; and NBIC (NB-23) issued December 31, 2004

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There is a cost of \$1,355 for the purchase of the ASME publications for the Division of Administrative Rules. The ASME provides one set of the publications free to the Safety Division. The NBIC provides their publication at no cost. Other than the cost mentioned, there should be no cost or savings to the State budget because these publications incorporate into one volume the addenda and previous edition of the rules that have already been adopted.

❖ LOCAL GOVERNMENTS: There should be no cost or savings to local government because these publications incorporate into one volume the addenda and previous edition of the rules that have already been adopted.

❖ OTHER PERSONS: There should be no cost or savings to other persons because these publications incorporate into one volume the addenda and previous edition of the rules that have already been adopted.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There should be no additional compliance costs for affected persons, as the rules have previously been adopted.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The substance of the ASME and NBIC codes are already in effect by virtue of the Labor Commission's previous adoption of various interim addenda and supplements. Consequently adoption of the most current compilation will have no fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

LABOR COMMISSION  
SAFETY  
HEBER M WELLS BLDG  
160 E 300 S  
SALT LAKE CITY UT 84111-2316, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Pete Hackford at the above address, by phone at 801-530-7605, by FAX at 801-530-6390, or by Internet E-mail at phackford@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 02/14/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 02/15/2005

AUTHORIZED BY: R Lee Ellertson, Commissioner

**R616. Labor Commission, Safety.**

**R616-2. Boiler and Pressure Vessel Rules.**

**R616-2-3. Safety Codes and Rules for Boilers and Pressure Vessels.**

The following safety codes and rules shall apply to all boilers and pressure vessels in Utah, except those exempted pursuant to Section 34A-7-101, and are incorporated herein by this reference in this rule.

A. ASME Boiler and Pressure Vessel Code (200[+]~~4~~).

1. Section I Rules for Construction of Power Boilers published July 1, [~~2001 and 2003 Addenda published July 1, 2003~~]2004.

2. Section IV Rules for Construction of Heating Boilers published July 1, [~~2001 and 2003 Addenda published July 1, 2003~~]2004.

3. Section VIII Rules for Construction of Pressure Vessels published July 1, [~~2001 and 2003 Addenda published July 1, 2003~~]2004.

B. Power Piping ASME B31.1 (200[+]~~4~~), issued [~~December 10, 2001 and ASME section B31.1a 2002 Addenda, issued September 20, 2003~~]August 16, 2004.

C. Controls and Safety Devices for Automatically Fired Boilers ASME CSD-1-1998; the ASME CSD-1a-1999 addenda, issued March 10, 2000; and the ASME CSD-1b (2001) addenda, issued November 30, 2001.

D. National Board Inspection Code ANSI/NB-23 [~~(2001) issued August 2001; the (2001) addenda, issued December 31, 2001; and the (2002) addenda, issued December 31, 2002; and the (2003) addenda, issued December 31, 2003~~](2004) issued December 31, 2004.

E. Standard for the Prevention of Furnace Explosions/Implosions in Single Burner Boilers, NFPA 850 (1997).

F. Standard for the Prevention of Furnace Explosions/Implosions in Multiple Burner Boilers, NFPA 850 (1995).

G. Recommended Administrative Boiler and Pressure Vessel Safety Rules and Regulations NB-132 Rev. 4.

H. Pressure Vessel Inspection Code: Maintenance Inspection, Rating, Repair and Alteration API 510 (1997); the 1998 Addenda, published December 1998, and Addendum 2, published December 2000.

**KEY: boilers, certification, safety**

~~[March 15, 2004]~~2005

Notice of Continuation January 10, 2002

34A-7-101 et seq.



School and Institutional Trust Lands,  
Administration

**R850-20**

Mineral Resources

**NOTICE OF PROPOSED RULE**

(Repeal)

DAR FILE NO.: 27611

FILED: 12/23/2004, 15:33

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The mineral rules have been amended many times and many of those changes pre-date the establishment of the School and Institutional Trust Lands Administration in 1994. Many changes have been made in how we do business and the current rule is confusing as to which sections apply to which commodities. New mineral rules have been written in an effort to give greater clarity and make them more user-friendly. Each commodity has been separated into its own rule so that the rules are commodity-specific. This rule is being replaced by: R850-21. Oil, Gas and Hydrocarbon Resources; R850-22. Bituminous-Asphaltic Sands and Oil Shale Resources; R850-23. Sand, Gravel and Cinders Permits; R850-24. General Provisions: Mineral and Material Resources, Mineral Leases and Material Permits; R850-25. Mineral Leases and Materials Permits; R850-26. Coal Leases; and R850-27. Geothermal Steam. (DAR NOTE: The proposed new rules are as follows: Rule R850-21 under DAR No. 27612, Rule R850-22 under DAR No. 27613, Rule R850-23 under DAR No. 27609, Rule R850-24 under DAR No. 27607, Rule R850-25 under DAR No. 27606, Rule R850-26 under DAR No. 27604, and Rule R850-27 under DAR No. 27601 all in this issue.)

SUMMARY OF THE RULE OR CHANGE: Rule R850-20 covering all mineral-type commodities is being repealed in its entirety in order that each commodity can be better regulated by its own commodity-specific rule. The new rules are available for review and comment during this same 30-day period of time.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsections 53C-1-302(1)(a)(ii), 53C-2-201(1)(a), 53C-2-401(1)(d)(ii), 53C-2-402(1), and 53C-2-407(4)

## ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: It is not anticipated that the repeal of this rule will create any cost or savings to the State because it is being replaced with six separate rules that will regulate the same commodities.
- ❖ LOCAL GOVERNMENTS: It is not anticipated that the repeal of this rule will create a cost or savings to local governments because of the simultaneous enactment of six separate rules that will regulate these same commodities.
- ❖ OTHER PERSONS: It is not anticipated that the repeal of this rule will bring about any cost or savings to other persons because of the simultaneous enactment of the six separate rules that will regulate these same commodities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: It is not anticipated that the repeal of this rule will bring about any cost or savings for affected persons because of the simultaneous enactment of the six separate rules to the agency rules that will replace this rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Since the material in this rule will be re-promulgated in replacement rules concurrently with this action, it is not anticipated that there will be any fiscal impact from this action.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

SCHOOL AND INSTITUTIONAL TRUST LANDS  
ADMINISTRATION  
Room 500  
675 E 500 S  
SALT LAKE CITY UT 84102-2818, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

LaVonne Garrison at the above address, by phone at 801-538-5100, by FAX at 801-355-0922, or by Internet E-mail at [lavonnegarrison@utah.gov](mailto:lavonnegarrison@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 02/14/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 04/01/2005

AUTHORIZED BY: Kevin S. Carter, Director

**R850. School and Institutional Trust Lands, Administration.****~~R850-20. Mineral Resources.~~****~~R850-20-100. Authorities.~~**

~~— This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution, and Sections 53C-1-302(1)(a)(ii) and 53C-2-402(1) which authorize the Director of the School and Institutional Trust Lands Administration to establish rules for the issuance of mineral leases and management of state owned lands and mineral resources.~~

**~~R850-20-150. Planning.~~**

~~— Pursuant to Section 53C-2-201(1)(a), this category of activity carries no planning obligations by the agency beyond existing rule-based analysis and approval processes. Mineral development activities are regulated pursuant to R645, R647, and R649.~~

**~~R850-20-175. Coal Leasing of Lands Acquired in Public Law 105-335 Exchange.~~**

~~— 1. Acquired lands shall mean lands acquired by the School and Institutional Trust Lands Administration pursuant to the Utah Schools and Lands Exchange Act of 1998, Public Law 105-335, 112 Stat. 3139 (1998)(the "Act").~~

~~— 2. Leasing of coal interests in the acquired lands shall be governed by applicable provisions of state law, the Act, that certain Memorandum of Understanding Between the Utah School and Institutional Trust Lands Administration, the United States Department of Agriculture, and the United States Department of the Interior dated January 5, 1999, as amended from time to time, and, except as provided by R850-20-175(5), by the provisions of R850-~~

~~— 3. The director shall have broad discretion to determine terms, conditions and procedures for leasing coal interests in the acquired lands by simultaneous filing, including without limitation determination of rental rates, lease forms and lease stipulations for particular tracts, the amount of any required bid deposit, the minimum acceptable bid for particular tracts, terms of payment for bonus bids, and bidding procedures generally. The director may, but~~

is not obligated to disclose the minimum acceptable bid in advance of offering the lease by simultaneous filing.

— 4. In the event that the high bid in any simultaneous lease filing does not meet the minimum acceptable bid previously determined by the director, the director may, but is not obligated to, negotiate with the high bidder to obtain a negotiated bid that, in the discretion of the director, represents fair market value. Alternatively, the director may re-offer the lands for simultaneous filing, hold an oral auction of the lands pursuant to Subsection 53C-2-407(4), or withdraw the lands from leasing.

— 5. The following rules shall not apply to leasing of coal interests in the acquired lands by simultaneous filing: R850-20-700 (Non-Contiguous Tracts); R850-20-900 (Lease Acreage Limitations); R850-20-1000(1)(a)(Rentals); R850-20-1500 (Minimum Bid/Simultaneous Filing); R850-20-1600 (Posting Dates/Simultaneous Filing); R850-20-1100 (Rental Credit).

— 6. Nothing in this rule shall prevent the agency from leasing or otherwise disposing of coal interests in the acquired lands pursuant to Subsection 53C-2-401(1)(d)(ii), subject to compliance with applicable law.

#### **R850-20-200. Mineral Leases—Issuance.**

— Applications are made for and the agency shall issue separate mineral leases on the following classifications of mineral substances:

— 1. ~~Metalliferous Minerals~~ shall include Aluminum, Antimony, Arsenic, Beryllium, Bismuth, Chromium, Cadmium, Cerium, Columbium, Cobalt, Copper, Fluorspar, Gallium, Gold, Germanium, Hafnium, Iron, Indium, Lead, Mercury, Manganese, Molybdenum, Nickel, Platinum, Group Metals, Radium, Silver, Selenium, Scandium, Rare Earth Metals, Rhenium, Tantalum, Tin, Thorium, Tungsten, Thallium, Tellurium, Vanadium, Uranium, Ytterbium, and Zine.

— 2. Oil, Gas, and Hydrocarbon shall include oil, natural gas, elaterite, ozocerite, and other hydrocarbons (whether the same be found in solid, semi-solid, liquid, vaporous, or any other form) including tar, bitumen, asphaltum, and maltha, and other gases. The oil, gas, and hydrocarbon category shall not include coal, oil shale, or gilsonite.

— 3. Oil Shale shall include any sedimentary rock containing kerogen.

— 4. Coal shall include black or brownish-black solid fossil fuel that has been subjected to the natural processes of coalification and which falls within the classification of coal by rank: I Anthracite, II Bituminous, III Sub-Bituminous, IV Lignite.

— 5. Potash shall include the chlorides, sulfates, carbonates, borates, silicates, and nitrates of potassium.

— 6. Phosphate shall mean any phosphate rock containing one or more phosphate minerals such as calcium phosphate and shall include all phosphatized limestones, sandstones, shales, and igneous rocks.

— 7. Clay Minerals shall include Kaolin, Bentonite, Ball Clay, Fire Clay, Fuller Earth, and clays or shales having unique characteristics giving the mineral deposit distinct and special value, such as Carbonaceous Shale, Humic Shale, and Baked Shale.

— 8. Limestone shall include bedded sedimentary rock having a predominant composition of calcium carbonate or calcium magnesium carbonate.

— 9. Gemstone and Fossil—Agate, Amber, Beryl, Calcite, Chert, Coral, Corundum, Diamond, Feldspar, Garnet, Geodes, Jade, Jasper, Olivine, Opal, Pearl, Quartz, Septarian Nodules, Spinel, Spodumene,

Topaz, Tourmaline, Turquoise, and Zircon; and Coquina, Petrified Wood, Trilobites, and Other Fossilized Flora and Fauna.

— 10. Gypsum—Alabaster, Anhydrite, Gypsite, Satin Spar, and Selenite.

— 11. Gilsonite.

— 12. Volcanic Material shall include Volcanic Pyroclastic Material including Ash, Blocks, Bombs, and Tuff; and Volcanic Glass Material including Perlite, Pitchstone, Pumice, Scoria, and Vitrophyre.

— 13. Industrial Sands—Abrasive sands, Filler sands, Foundry Sands, Frac Sands, Glass Sands, Lime Sands, Magnetic Sands, Silica Sands, and other uncommon sands used in industrial applications.

— 14. Mineral Salts.

#### **R850-20-300. Non-Classified Minerals.**

— A person may make application for and the agency may issue leases covering other minerals not included in R850-20-200 classifications. These leases are on terms and conditions as the agency finds to be in the best interest of the Trust Lands Administration.

#### **R850-20-400. Close Association Minerals.**

— A mineral lease issued as to any category shall include other minerals found in a close association with the expressly leased minerals when the expressly leased minerals cannot reasonably be mined or removed separately.

#### **R850-20-500. Mineral Estate Distinctions.**

— Common varieties of sand and gravel and volcanic cinder are not considered part of the mineral estate on Trust Lands Administration owned lands in Utah. These commodities are withdrawn from leasing and may only be obtained through a materials permit approved by the agency director. Materials permits are administered through the regional offices of the agency.

#### **R850-20-700. Non-Contiguous Tracts.**

— A separate application is filed for each non-contiguous tract of land sought to be leased, unless all of the tracts sought to be leased fall entirely within a single township.

#### **R850-20-800. Size of Leasable Tract.**

— Except for good cause shown, no mineral lease is issued for a tract less than a quarter-quarter section or surveyed lot, except where the land owned by the Trust Lands Administration within any quarter-quarter section or surveyed lot is less than the whole thereof, in which case the lease will be issued only on the entire area owned and available for lease within the quarter-quarter section or surveyed lot.

#### **R850-20-900. Lease Acreage Limitations.**

— Mineral leases are limited to no more than 2,560.00 acres or four sections.

#### **R850-20-1000. Rentals and Royalties.**

— 1. Rentals

— (a) Rental for the first lease year is at the rate of \$1 per acre, or fractional part thereof, per annum, regardless of percentage of Trust Lands Administration ownership in any given acre of land. Subsequent rental paying dates shall be on or before the annual anniversary date of the effective date of the lease, the effective date

of the lease being the first day of the month following the date on which the lease is issued.

— (b) Any overpayment of advance rental occurring from mineral lease applicant's incorrect listing of acreage of lands described in the application, may, at the option of the agency, be credited toward the applicant's rental account.

— (c) Minimum annual rental on any mineral lease is \$20.

— (d) The agency shall accept lease payments made by any party, but the acceptance of lease payments shall not be deemed to be a recognition of any interest of the payee in the lease.

**2. Royalty Provisions**

The following production royalty rates shall apply to all classified mineral leases, as listed in R850-20-200, issued on or after the effective date of the applicable adjusted royalty rate. Mineral leases entered into prior to the effective date of adjusted royalty rates shall retain the royalty rate as specified in the lease agreement. The board shall review production royalty rates on a timely basis and shall adjust rates when in the best interest of the trust. Production royalty rates for non-classified minerals shall be established by the board as the need arises.

— (a) Royalty rates on substances under oil, gas, and hydrocarbon leases.

TABLE

Oil	12 1/2%	Sulfur	12 1/2%
Gas	12 1/2%	Other hydrocarbon substances	6 1/4% (1)

— (1) During the first ten years of production and increasing annually thereafter at the rate of 1% to a maximum of 16 2/3%.

— (b) Royalty rates on mineral commodities, coal, and solid hydrocarbons.

TABLE

Coal	8%	Phosphate	5%
Oil Shale (1)	5%	Potash and Associated Minerals	2%
Asphaltic/Bituminous	5%	Gypsum	5%
Sands (2)	7%		
Gilsonite	10%	Clay	5%
Met. Minerals		Geothermal Resources	10%
Fissionable	0%	Limestone	5%
Non Fissionable	4%		
Gemstone/Fossil (3)	10%	Volcanic Materials	5%
Salt (Sodium chloride)	3%	Industrial sands	5%

— (1) 5% during the first five years of production and increasing annually thereafter at the rate of 1% to a maximum of 12 1/2% (providing that the first lessee to commercially produce oil shale on Trust Lands Administration lands shall be exempted from royalty payment on the first 200,000 barrels within a 12 month period). (See R850-20-3500.)

— (2) May be escalated after the first five years of production at the rate of 1% per annum to maximum of 12 1/2% at lessor's discretion.

— (3) Requires payment of annual minimum royalty of \$5 per acre.

— (c) Notwithstanding the terms of oil, gas, and hydrocarbon lease agreements, gas and natural gas liquid reports, and their required royalty payments, are required to be received by the agency on or before the last day of the second month succeeding the month of production. This extension of payment and reporting time for gas

and NGL does not alter the payment and reporting time for oil and condensate royalty which must be received by the agency on or before the last day of the calendar month succeeding the month of production, as currently provided in the lease form.

— (d) Any gilsonite lessee may petition the agency to amend its state gilsonite lease as to "Article VI, Payment of Rentals and Royalties", paragraph, SECOND, with the following provision:

— SECOND: Lessee shall pay a production royalty on the basis of a percentage of the market price, including all bonuses and allowances received by lessee, f.o.b. the nearest point of sale of the first marketable product or products produced from the leased substances and sold under a bona fide contract of sale, whether or not the product or products are produced through chemical or mechanical treating or processing of the leased substances raw material. It is expressly understood and agreed that none of lessee's mining, or product costs, including material costs, labor costs, overhead costs, distribution costs, or general and administrative costs may be deducted from market price f.o.b. the point of sale in computing lessor's royalty. All costs shall be entirely borne by lessee and are anticipated by the rate of royalty assigned in his agreement. The royalty shall be 12 1/2% of the market price, as defined above, except where the thickness of the vein is less than 24 inches, in which case the royalty shall be as follows:

TABLE

Vein Size	Royalty Rate
From 23.0 inches to 21.0 inches	8%
From 20.0 inches to 18.0 inches	5%
Less than 18 inches	3%

— Where lessee is claiming a vein width less than 24 inches, he shall be required to measure the width of the vein in the course of mining every 20 feet on each level, and each quarter shall submit a statement, signed and attested to by the lessee, giving the tonnage mined during said quarter, the average width of the vein mined during that quarter, and showing on a suitable plat, the location and width of the measured locations. Lessor shall have the right to require that the vein width measurements and quarterly statement be performed and prepared by a certified professional engineer employed by and at the sole expense of lessee. Further, lessee agrees to the following special stipulations regarding the royalty rate provision contained in this lease.

— i) This royalty rate provision shall be subject to review in five years from the date of this amendment, at which time the lessor may make any reasonable changes in the provision as may be deemed to be in the best interest of the Trust Lands Administration.

— ii) At the time of review of the original lease or of this royalty provision, the lessee shall provide the lessor, at no cost, on a proprietary basis, all of lessee's information and documentation regarding sales, costs of production, and ore prices, for all gilsonite mined under this lease.

**R850-20-1100. Rental Credit.**

— The rental paid for the lease year shall be credited only against the production royalties as they accrue for that lease year.

**R850-20-1200. Record of Application and Deficient Applications.**

— Applications for mineral leases, except in the case of simultaneous filing, are received for filing in the office of the agency during office hours. Except as provided, all the applications

received, whether by U.S. Mail or by personal delivery over the counter, are immediately stamped with the exact date and time of filing. All applications presented for filing at the opening of the office for business on any business day are stamped received as of 8 a.m., of that day. In the same manner, all applications received in the first delivery of the U.S. Mail of each business day is stamped received as of 8 a.m., of that day. The time indicated on the time stamp is deemed the time of filing unless the agency director shall determine that the application is materially deficient in any particular or particulars. If an application is determined to be deficient, it is returned to the applicant with instructions for its amendment or completion.

— If the application is resubmitted in satisfactory form within 15 days from the date of the instructions, it shall retain its original filing time. If the application is resubmitted at any later time, it is deemed filed at the time of resubmission.

**R850-20-1300. Order of Filing Conflict.**

— Except in cases of simultaneous filing, in the event that two or more applications for the same land bear a time stamp showing the said applications were filed at the same time, then the agency shall determine which applicant is awarded a lease by public drawing.

**R850-20-1500. Minimum Bid/Simultaneous Filing.**

— The bid shall at least equal the rental rate for the substance to be leased and shall be the rental for the first year of the lease.

**R850-20-1600. Posting Dates/Simultaneous Filing.**

— Notices of the offering of lands for simultaneous filing will run for 15 working days and are posted at times to insure that all bid openings are on the last Monday of that month.

**R850-20-1700. Sealed Envelopes/Simultaneous Filing.**

— Applications shall be submitted in sealed envelopes marked for simultaneous filing.

**R850-20-1800. Application Refund.**

— If application, or any part thereof, is rejected, money tendered for rental or rejected portion may be refunded or credited.

**R850-20-1900. Application Withdrawal.**

— Should an applicant desire to withdraw his application, the applicant must make a written request. If the request is received prior to the time the agency approves the application, all money tendered by the applicant, except the filing fee, is refunded. If the request is received after approval, then, unless the applicant accepts the offered lease, all money tendered is forfeited to the trust, unless otherwise ordered by the board for good cause shown.

**R850-20-2000. Application Withdrawal Under Simultaneous Filing.**

— Applicants desiring to withdraw an application which has been filed under the simultaneous filing rules, must make a written request. If the request is received before sealed bids for rental have been opened, all money tendered by the applicant, except the filing fee, is refunded. If the request is received after sealed bids for rental have been opened, and if the applicant's rental offer is high, then unless the applicant accepts the offered lease, all money tendered is forfeited to the Trust Lands Administration, unless otherwise ordered by the board for good cause shown.

**R850-20-2100. Failure of Trust's Title.**

— Should it be found necessary to reject an application or to terminate an existing lease, excepting applications or leases approved through simultaneous leasing procedure, due to failure of trust's land title, then only advance rental paid for the year in which title failure is discovered is refunded. All other advance rentals and fees paid on the application or lease are forfeited to the Trust Lands Administration.

**R850-20-2200. Lease Provisions.**

— In order to affect the purposes of development of mineral resources owned by the Trust Lands Administration, the following provisions, terms and conditions shall apply to all mineral lessees/leases:

— 1. Preference Rights for Unleased Minerals—Any mineral lessee who discovers any minerals on lands leased from the Trust Lands Administration which are not included within his lease shall have a preference right to a mineral lease covering these unleased minerals, provided the unleased minerals at the time of discovery are not included within a mineral lease or mineral lease application of another party. The preference right lease is issued upon a lease form in current use by the state of Utah. The preference right lease is subject to the rental, royalty, and development requirements as provided in the lease form. The preference right shall not extend to any unleased minerals which have been withdrawn from mineral leasing. The preference right shall continue for a period of 60 days after the discovery of unleased minerals, provided the applicant notifies the agency within the ten days after the discovery and makes application to lease the unleased minerals within 60 days after the date of discovery.

— 2. Lease Term Exclusion—If drilling operations are being diligently pursued on the leased premises at the end of the term, including any valid extension of any oil and gas lease, the term of the lease shall automatically extend for a term of two additional years. Upon written application by lessee and satisfactory showing of due diligence in prosecution of drilling operations, an extension rider is issued by the agency. Application for extension rider shall be filed by the lessee within 30 days prior to expiration of the fixed term of any valid extension of the lease.

— 3. Cultural, Paleontological, and Biological Resources—The agency may require the lessee to:

— (a) provide a cultural, paleontological or biological survey on lands under mineral lease; and

— (b) be responsible for reasonable mitigative actions as specified by the agency. Surveys conducted in performance for another state or federal agency may be submitted to the agency when the survey is also required by the agency.

— 4. Geologic Data—Lessee or operator shall keep a log of geologic data accumulated or acquired by lessee within the land area described in the lease. This log shall show the formations encountered and any other geologic information reasonably required by lessor and shall be available upon request by the agency. A copy of the log, as well as any data related to exploration drill holes, shall be deposited with the agency upon termination of the lease.

— 5. Assignments, Subleases and Overriding Royalties

— (a) Definitions—

— i) total assignment: an assignment of undivided total interest.

— ii) interest assignment: an assignment of any working interest less than the undivided total, except overriding royalty interests.

— iii) partial assignment: an assignment of part of the lands in a lease and a segregation of the assigned lands into a separate lease.

—(b) Any mineral lease may be assigned or subleased as to all or part of the acreage, to any person, firm, association, or corporation qualified to hold a lease, provided, however, that all assignments and subleases are approved by the board or by the agency. No assignment or sublease is effective until approval is given. Any assignment or sublease made without approval is void.

— i) The director shall not withhold approval of any transfer of interest which has been properly executed, the required filing fee is paid for each separate lease in which an interest is transferred, and the transfer appears to comply with the law and these rules, unless the director determines that approval would interfere with the development of the subsurface resources, or otherwise be detrimental to the interests of the trust beneficiaries.

— ii) If approval of any transfer is withheld by the director, the transferee shall be notified of such decision, and the reason(s) therefor, and as appropriate advise the transferee of what action is necessary to secure approval. Any decision to withhold approval may be appealed pursuant to Rule R850-9 or any similar rule in place at the time of such decision.

— (c) Unless otherwise authorized by the agency, an assignment of a portion of a lease covering less than a quarter quarter section, a surveyed lot, an assignment of a separate zone, or a separate deposit is not approved.

— (d) An assignment or sublease shall take effect the first day of the month following the approval of the assignment or sublease by the board, or by the agency. The assignor or sublessor or surety, if any, shall continue to be responsible for performance of any and all obligations as if no assignment or sublease had been executed until the effective date of the assignment or sublease. After the effective date of any assignment or sublease, the assignee or sublessee is bound by the terms of the lease to the same extent as if the assignee or sublessee were the original lessee, any conditions in the assignment to the contrary notwithstanding.

— (e) A partial assignment of any lease shall segregate the assigned or retained portions thereof and, after the effective date, release or discharge the assignor from any obligation thereafter accruing with respect to the assigned lands. Segregated leases shall continue in full force and effect for the primary term of the original lease or as further extended pursuant to the terms of the lease.

— (f) An assignment or transfer of a lease, interest herein, or of an overriding royalty must be a good and sufficient legal instrument, properly executed and acknowledged, and should clearly set forth the serial number of the lease, the land involved, and the name and address of the assignee, and the interest transferred.

— (g) An assignment must affect or concern only one lease or a portion thereof, except for good cause shown.

— (h) Any assignment which would create a cumulative overriding royalty in excess of the production royalty payable to the Trust Lands Administration as landowner will not be approved by the agency. Any agreement to create or any assignment creating overriding royalties or payments out of production removed or sold from the leased lands is subject to the board, after notice and hearing, to require the proper parties thereto to suspend or modify the royalties or payments out of production in such a manner as may be reasonable when and during such period of time as they may constitute any undue economic burden upon the reasonable operations of this lease.

— (i) Assignment instructions are as follows:

— i) Prepare and execute the assignments in duplicate, complete with acknowledgments.

— ii) Each copy of the assignment shall have attached thereto an acceptance of assignment duly executed by the assignee.

— iii) All assignments forwarded to or deposited with the agency must be accompanied by the prescribed fee.

— (j) If an applicant or lessee dies, his/her rights shall be transferred to the heirs, devisees, executor or administrator of the estate, as appropriate, upon the filing of a death certificate together with other appropriate documentation as may be required to verify change of ownership, and a list, by serial number of all lease interests affected and a statement that all parties are qualified to do business with the agency. The required filing fee must be paid for each separate lease in which an interest is transferred. A bond rider or replacement bond may be required for any bond(s) previously furnished by the decedent.

— (k) If a corporate merger affects mineral leases where the transfer of property of the dissolving corporation to the surviving corporation is accomplished by operation of law, no transfer of any affected lease is required. A notification of the merger shall be furnished with a list, by serial number of all lease interests affected. The required filing fee must be paid for each separate lease in which an interest is transferred. A bond rider or replacement bond conditioned to cover the obligations of all affected corporations may be required by the director as a prerequisite to recognition of the merger.

— (l) If a change of name of a lessee affects mineral leases the notice of name change shall be submitted in writing with appropriate documentation evidencing the name change accompanied by a list of leases affected by the name change. The required filing fee must be paid for each separate lease in which an interest is transferred. A bond rider or replacement bond to accommodate name change, conditioned to cover the obligations of all affected corporations may be required by the director as a prerequisite to recognition of the change of name.

— 6. Lease Amendments When the board approves the amendment of existing mineral leases by substituting a new lease form for the existing form(s), the amended lease will retain the effective date of the original lease.

#### **R850-20-2300. Lessee Rights.**

— Lessee rights subject to the following provisions:

— 1. Mineral exploration, oil and gas drilling, or other operations which disturb the surface of lands contained within or above the mineral lease lands require surface rehabilitation of the disturbed area as approved by the agency, and as required by the laws administered by the Utah Division of Oil, Gas and Mining listed under paragraph (2) of this section.

— In all cases, the lessee must agree to slope the sides of all excavations to a ratio not steeper than one foot vertically for each two feet of horizontal distance, unless otherwise approved by the agency prior to commencement of operations. This sloping shall be a concurrent part of the operation of the leased premises to the extent that the operation shall not at any time constitute a hazard. Wherever practicable, all pits or excavations shall be shaped to facilitate drainage and control erosion; and in no case shall the pits or excavations be allowed to become a hazard to persons or livestock. All material mined, but not removed from the premises, shall be used to fill the pits and leveled, unless consent of the agency to do otherwise is obtained, so at the termination of the lease, the land will as nearly as practicable approximate its original configuration. All drill holes must be plugged in accordance with rules promulgated by the Division of Oil, Gas and Mining.

—The agency may require that all topsoil in the affected area be removed, stockpiled, and stabilized on the leased premises until the completion of operations. Upon reclamation, the stockpiled topsoil will be redistributed on the affected area and the land revegetated as prescribed by the agency. All mud pits shall be filled and materials and debris removed from the site.

—2. All lessees and operators shall comply with the following laws, as appropriate, which are administered by the Utah Division of Oil, Gas and Mining: for oil and gas and related operations, The Oil and Gas Conservation Act (Section 40-6-1 et seq.); for non-coal mining or exploration operations, The Utah Mined Land Reclamation Act (Section 40-8-1 et seq.); and for coal mining or exploration, The Coal Mining Reclamation Act (Section 40-10-1 et seq.).

#### **R850-20-2400. Operations Notification Period.**

—1. At least 60 days prior to the commencement of mineral exploration, mining or other operations which disturb the surface of lands contained within or above a mineral lease, lessee shall submit plans for operations to the School and Institutional Trust Lands Administration. The agency shall review and make an environmental assessment and endorse or stipulate changes in lessee's plan of operation within the review period. Where feasible, the agency's review shall be conducted concurrently with those of other agencies. Review by another state or federal agency may be accepted by the agency in lieu of a separate agency review. Following review, the agency may require the lessee to adopt a special rehabilitation program required by lessor for the particular property in question. Lessee shall not commence operations upon the land without a plan of operation approved by the agency.

—2. Before any operator or lessee shall commence actual drilling operations of any well or prior to commencing any surface disturbance associated with the activity on lands contained within a mineral lease, the operator or lessee shall simultaneously file with the agency a legible copy of the application for permit to drill (APD), as is filed with the Division of Oil, Gas, and Mining.

—The agency will review any request for drilling operation and will grant approval, providing that the contemplated location and operations are not in violation of any rules, order, or policy of the School and Institutional Trust Lands Board of Trustees. Agency approval of the application for permit to drill on mineral resources administered by the School and Institutional Trust Lands Administration is required prior to approval by the Division of Oil, Gas, and Mining. Notice of approval by the School and Institutional Trust Lands Administration will be given in an expeditious manner to the Division of Oil, Gas, and Mining.

—3. All lessees or designated operators under mineral leases have responsibility to be aware of notification requirements and operating rules promulgated by the Division of Oil, Gas and Mining with regard to mineral exploration, mining, or oil and gas drilling on lands within the state of Utah. Lessees or operators shall fully comply with all the rules or requirements and provide timely notifications, mine plans, well completion reports, or other information as may be requested.

#### **R850-20-2500. Multiple Mineral Development (MMD) Area Designation.**

—1. The board may designate any land under its authority as a multiple mineral development area. In designated multiple mineral development areas the board may require, in addition to all other terms and conditions of the mineral lease, that the lessee furnish a

bond or evidence of financial responsibility as specified by the board, to assure that the Trust Lands Administration and other mineral lessees shall be indemnified and held harmless from and against unreasonable and all unnecessary damage to mineral deposits or improvements caused by the conduct of the lessee on Trust Lands Administration lands. Written notice shall be given to all mineral lessees holding a mineral lease within the multiple mineral development area. Thereafter, in order to preserve the value of mineral resources the agency may impose any reasonable requirements upon any mineral lessee who intends to conduct any mineral activity within the multiple mineral development area. The lessee is required to submit advance written notice of any activities to occur within the multiple mineral development area to the agency and any other information that the agency may request. All activities within the multiple mineral development area are to be deferred until the agency has specified the terms and conditions under which the mineral activity is to occur and has granted specific permission to conduct the activity. The agency may hold public meetings regarding the mineral development within the multiple mineral development area.

—2. The board may grant a mineral lease extension under a multiple mineral development area designation, providing that the mineral lessee or operator requests an extension to the board prior to the lease expiration date, and that the lessee or operator would have otherwise been able to request a lease extension as provided in Section 53C-2-405(4).

#### **R850-20-2600. Term of Mineral Lease.**

—The term of all mineral leases included in any cooperative or unit plan of oil and gas development or operation in which the agency has joined, or shall hereafter join, shall be extended automatically for the term of the unit or cooperative agreement. Rentals on leases so extended shall be at the rate specified in the lease, subject to the change in rates as may be demanded by the lessor on any lease readjustment date as authorized by the lease.

#### **R850-20-2700. Lease Continuation.**

—Any lease which shall be eliminated from any such cooperative or unit plan of development or operation, or any lease which shall be in effect at the termination of the cooperative or unit plan of development or operation, unless relinquished, shall continue in effect for the fixed term of the lease, or for two years after its elimination from the plan or agreement or the termination thereof, whichever is longer, and so long thereafter as the leased substances are produced in paying quantities. Rentals under such leases shall continue at the rate specified in the lease.

#### **R850-20-2800. Bonding.**

—1. Prior to commencement of any operations on a mineral lease, the lessee or designated operator shall post with the agency a bond in the form and amount as may be determined by the agency to assure compliance with all terms and conditions of the lease.

—2. The bond required for an oil and gas, geothermal, or minerals exploration project shall be:

—(a) a statewide blanket bond in the minimum amount of \$80,000 covering exploration operations on all Trust Lands Administration mineral leases held by lessee which shall be in an amount at least equal to the accumulative amount of individual project bonds as set forth below; or

—(b) a project bond covering an individual exploration project involving one or more mineral leases. The amount of the project

bond will be determined by the agency at the time lessee gives notice of proposed operations. This bond will not be less than \$5,000 per acre of surface disturbance, or in the case of an oil and gas or geothermal well:

TABLE

WELL DEPTH	BOND AMOUNT
0 - 3,000 ft.	\$10,000
3,000 - 10,000 ft.	20,000
Greater than 10,000 ft.	40,000

3. The bond required for construction and operation of a mine or minerals production plant shall be determined by the agency on basis of an approved mining and reclamation plan or plan of development and operations. This bond may be posted with the Division of Oil, Gas and Mining providing written consent is first obtained from the School and Institutional Trust Lands Administration. Existing project bonds on the same lease(s) may be incorporated into this mine or minerals production plant bond.

4. All bonds posted on mineral leases may be used for payment of all monies, rentals, and royalties, due the Trust Lands Administration as lessor, including:

(a) costs of reclamation, damages to the surface and improvements thereon, and any other costs which arise by operation of the lease and accrue to the lessor.

(b) lessee's compliance with all other terms and conditions of the lease, rules, and policies relating thereto of the Board of Trustees, School and Institutional Trust Lands Administration, Board of Oil, Gas, and Mining, and Division of Oil, Gas, and Mining.

This bond shall be in effect even if the lessee or designated operator has conveyed all or part of the leasehold interest to a sublessee(s), assignee(s), or subsequent operator(s), until the bond may be released by the lessor, or until the lessee or designated operator fully satisfies the above described obligations, or until the bond is replaced with a new bond posted by a sublessee, assignee, or new designated operator.

5. Bonds may be accepted in any of the following forms at the discretion of the agency:

(a) Surety bond with an approved corporate surety registered in Utah.

(b) Cash deposit. The Trust Lands Administration will not be responsible for any investment returns on cash deposits.

(c) Certificate of deposit in the name of "School and Institutional Trust Lands Administration and lessee, c/o lessee's address", with an approved state or federally insured banking institution registered in Utah. The certificate of deposit must have a maturity date no greater than 12 months, be automatically renewable, and be deposited with the agency. The lessee will be entitled to and receive the interest payments. All certificates of deposit must be endorsed by the lessee prior to acceptance by the director.

(d) Other forms of surety as may be acceptable to the School and Institutional Trust Lands Administration.

6. Any lessee or designated operator forfeiting a bond is denied approval of any future exploration or mining on Trust Lands Administration lands, except by compensating the Trust Lands Administration for previous defaults and posting the full bond amount estimated for reclamation or lease performance and reclamation on subsequent operations.

7. Bonds may be increased at any time in reasonable amounts as the School and Institutional Trust Lands Administration may order, providing lessor first gives lessee 30 days written notice stating the increase and the reason for the increase.

8. The agency shall waive the filing of a bond for any period during which a bond meeting the requirements of this section is on file with another agency.

**R850-20-2900. Mineral Lease Conversion.**

1. Oil, gas, and hydrocarbon leases include mineral substances formerly leased by the Trust Lands Administration under at least two separate mineral categories, oil and gas and asphaltic sands-bituminous sands. As to some of the lands, there is presently one or more leases outstanding or covering these mineral categories. It is the intention of the board to effect a gradual conversion of these outstanding leases to a single oil, gas, and hydrocarbon lease form and to effect this conversion in such a way as to not impair or diminish any vested rights, while at the same time attempting to gain the greatest overall return from the management of the Trust Lands Administration lands involved.

2. Where Trust Lands Administration lands are presently covered by either: (1) an asphaltic sands-bituminous sands lease where the oil and gas rights have not been withdrawn from leasing by the order of the board on October 12, 1965; or (2) oil and gas lease issued by the state of Utah, the holder of the lease may upon application and approval by the director, exchange the asphaltic sands-bituminous sands lease or oil and gas lease for an oil, gas, and hydrocarbon lease. The term of the oil, gas, and hydrocarbon lease where an oil and gas lease is converted, is for the remaining term of the oil and gas lease, plus two years. The term of the oil, gas, and hydrocarbon lease where an asphaltic sands-bituminous sands lease is converted is for the remaining term of the lease.

3. Where Trust Lands Administration lands are covered by both oil and gas lease and an asphaltic sands-bituminous sands lease, and one of these leases is cancelled, expires, or is terminated for any reason, then the surviving lessee may exchange his lease for an oil, gas, and hydrocarbon lease. The term of the oil, gas, and hydrocarbon lease, where an oil and gas lease is converted, shall be for the remaining term of the oil and gas lease, plus two years. The term of the oil, gas, and hydrocarbon lease, where an asphaltic sands-bituminous sands lease is converted, shall be for the remaining term of the lease. This conversion right shall expire 60 days from the date of notification of the surviving lessee of his privilege of conversion.

4. Where Trust Lands Administration lands are covered by an oil and gas lease and an asphaltic sands-bituminous sands lease, the board will, on written application, permit a conversion to the oil, gas, and hydrocarbon lease by an applicant who has acquired control of the leasehold rights in the outstanding oil and gas lease and the asphaltic sands-bituminous sands lease.

**R850-20-3400. Geothermal Steam Leases.**

Geothermal steam resources contained in or under lands of the Trust Lands Administration are reserved to the Trust Lands Administration and shall be sold only upon a lease and royalty basis. Applications shall be made upon forms provided by the agency and shall be subject to all applicable minerals management statutes and rules and the following provisions:

1. Geothermal steam leases are issued only on lands where the Trust Lands Administration owns both the surface and mineral rights, unless lessee agrees to accept as part of his lease agreement

the "Addendum to Geothermal Steam Lease and Agreement", adopted by the board on March 20, 1974.

— 2. Lessee shall file the required bond prior to the commencement of any operations on lands of the Trust Lands Administration.

**~~R850-20-3500. Oil Shale, Bituminous Sands Development Procedures of Claim.~~**

— The first lessee of the Trust Lands Administration to commercially produce oil from oil shale or bituminous sands on lands owned by the Trust Lands Administration is exempted from the payment of any royalty on the first 200,000 barrels of oil commercially produced. To claim this exemption, the lessee shall make a written application to the board for a hearing to determine the validity of lessee's claim. The application shall specify the lease number, location, and type of the production facilities and date on which production commenced, and evidence of marketing agreement to dispose of the oil so produced.

— The board shall fix a hearing date within 90 days from the date of filing the application. Notice of the hearing shall be furnished by United States Mail, postage prepaid, to all interested lessees; and notice of the hearing shall be published in a newspaper having general circulation in the state. The notice shall be furnished, and so published, at least 30 days prior to the hearing. Any other lessee asserting a right to an exemption prior to the applicant's, shall file written notice thereof with the board at least 15 days prior to the hearing and shall serve copies of the notice upon all other lessees asserting a claim. The hearing shall be conducted in accordance with the provisions of R850-8-400 and the board shall enter written findings and an order of exemption.

**~~R850-20-3800. Option To Modify 1981 Form Oil, Gas, and Hydrocarbon Leases.~~**

— 1. Provided the lessee agrees in writing, any oil, gas, and hydrocarbon lease written on a 1981 form, or any subsequent form with the same minimum royalty requirement, is amended in the following manner:

— (a) Under Section 2(d) of the lease the amount of minimum royalty is changed to \$1 per acre, if pursuant to Section 2(c) of the lease, diligent operations conducted by the lessee after the expiration of the primary term includes:

— i) the actual commencement of drilling operations on all or a portion of the leased premises; or

— ii) the commitment by the agency of all or a portion of the leased premises to a pooling, communitization or unit agreement which has been approved by the Trust Lands Administration, and the federal government if federal lands are within the boundaries of the agreement.

— (b) A refund of the difference between the amount paid under the original terms of the lease and this amendment will be paid to a lessee who requests the refund in the lease year the amount was due.

— (c) At the option of the lessee, the lease shall be converted to a new lease form which the agency shall provide at a later date. Certain provisions of the 1981 form, or any subsequent form with the same minimum royalty requirements, will be clarified under the new form. The rental, royalty, and minimum royalty will not be increased. The change will not affect the ten-year primary term of the lease, or the continuation of the lease past the primary term if production royalty is attributable to the leased premises, or if the diligent operations as listed above under Subsection 1.(a)(i) or (ii) are being conducted.

— (d) This amendment shall terminate 60 days after the new lease form is offered to the lessee. If the lessee does not elect to take the new lease form the original terms of the lease shall again be in effect.

**~~R850-20-3900. Primary Term of Mineral Leases.~~**

— The primary term of oil shale and tar sand leases shall not exceed 20 years. The primary term of all other mineral leases shall not exceed ten years.

**~~R850-20-4000. Readjustment Rule.~~**

— 1. Any lease, except an oil, gas and hydrocarbon lease, which is subject to a readjustment provision may be readjusted as follows:

— (a) Any term or condition of a lease may be readjusted including the rent, royalty, minimum rental, or minimum royalty provisions of the lease.

— (b) The agency shall give notice to the lessee at least one year prior to readjustment. Failure to give notice prior to a date a lease is eligible for readjustment shall not waive or prejudice the right of the agency to readjust the lease at a later date.

— (c) The readjusted terms shall become effective on the date specified by the agency at the time the readjusted terms are sent to the lessee.

— (d) The readjusted terms will conform with the current lease form, at the time of the readjustment, and all existing laws and rules, unless expressly provided otherwise.

— (e) Failure of the lessee to accept the terms of any readjustment shall be considered a violation of the provisions of the lease and shall subject the lease to forfeiture.

— 2. In the event of a conflict between this section and the terms of a readjustment provision in a lease, the lease terms shall supersede to the extent of the conflict.

**KEY: royalties, coal, primary term\*, administrative procedure  
March 3, 1999**

**Notice of Continuation June 27, 2002**

**53C-1-302(1)(a)(ii)**

**53C-2-201(1)(a)**

**53C-2-401(1)(d)(ii)**

**53C-2-402(1)**

**53C-2-407(4)**



School and Institutional Trust Lands,  
Administration  
**R850-21**  
Oil, Gas and Hydrocarbon Resources

**NOTICE OF PROPOSED RULE**

(New Rule)

DAR FILE NO.: 27612

FILED: 12/23/2004, 15:36

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose for this new rule is to accommodate the separation of the mineral commodities into their own commodity-specific sections of the agency's rules. This new rule more accurately

reflects the procedures used by the agency for administering the oil, gas, and hydrocarbon resources program since its establishment in 1994. The new rule also helps to eliminate much of the confusion experienced by the public under the existing mineral rule.

**SUMMARY OF THE RULE OR CHANGE:** This new rule outlines the procedures used by the agency in administering the oil, gas and hydrocarbon resources program. The two major changes that occur in this new rule that were not included in the previous Rule R850-20 are: 1) the limitation of total royalty burdens on agency oil, gas and hydrocarbon leases, including the percentage due to the agency, to 20% of 100%; and 2) the provision to allow a shut-in gas well to hold a lease for a maximum of five years past the end of the lease's primary term, so long as all necessary payments are made to the agency during both the primary term and secondary term of the lease. Also, the minimum annual delay rental, regardless of the amount of acreage, has been increased to \$40. (DAR NOTE: The proposed repeal of Rule R850-20 is under DAR No. 27611 in this issue.)

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Subsection 53C-1-302(1)(a)(ii), and Title 53C, Chapter 2 et seq.

**ANTICIPATED COST OR SAVINGS TO:**

- ❖ **THE STATE BUDGET:** It is anticipated that the small savings to the State budget that will come through the increased minimum annual delay rental will be consumed by the administrative costs incurred in the management of the lease.
- ❖ **LOCAL GOVERNMENTS:** There are no costs or savings to local government that are anticipated with the implementation of this rule because the resource program will continue to be administered in the same manner as it has in the past.
- ❖ **OTHER PERSONS:** It is anticipated that there will be a small cost to anyone applying for or holding a lease encompassing less than 40 acres, due to the increase in the minimum annual delay rental to \$40 per year. The cost will be the difference between the previous minimum annual delay rental of \$20, or their current annual delay rental payments, and the proposed minimum annual delay rental of \$40 per year.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The compliance costs for the implementation of this rule would be the small increase in the minimum annual delay rental for an applicant or lessee applying for or holding a lease of less than 40 acres.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** Two consequences of this rule may have an impact on Agency customers: 1) the rule will prohibit the total overhead royalty on a mineral lease from exceeding 20%. Royalty burdens above this amount tend to make mineral development uneconomical. Restricting lessees from imposing cumulative royalties each time a lease is transferred will serve as a detriment to those parties that speculate on mineral leases; and 2) the new rule will prohibit lessees from sitting on a lease that is capable of producing, but for which they are unwilling to make the necessary investments to deliver the product to market. If a lessee is unwilling to take the steps necessary to market and deliver the

produced oil and gas after five years from the end of the term of the lease, they will forfeit the lease and someone with better capabilities will be given the opportunity.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

SCHOOL AND INSTITUTIONAL TRUST LANDS  
ADMINISTRATION  
Room 500  
675 E 500 S  
SALT LAKE CITY UT 84102-2818, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
LaVonne Garrison at the above address, by phone at 801-538-5100, by FAX at 801-355-0922, or by Internet E-mail at lavonnegarrison@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 02/14/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 04/01/2005

AUTHORIZED BY: Kevin S. Carter, Director

**R850. School and Institutional Trust Lands, Administration.**  
**R850-21. Oil, Gas and Hydrocarbon Resources.**  
**R850-21-100. Authorities.**

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution, and Utah Code Title 53C et seq. which authorize the Director of the School and Institutional Trust Lands Administration to establish rules for the issuance of oil, gas and hydrocarbon leases and management of trust-owned lands and oil, gas and hydrocarbon resources.

**R850-21-150. Planning.**

Pursuant to Subsection 53C-2-201(1)(a), this category of activity carries no planning obligations by the agency beyond existing rule-based analysis and approval processes. Oil, gas and hydrocarbon development activities are regulated pursuant to R649.

**R850-21-175. Definitions.**

The following words and terms, when used in Section R850-21 shall have the following meanings, unless otherwise indicated:

1. Act: Utah Code 53C-1 et seq.
2. Agency: School and Institutional Trust Lands Administration or its predecessor agency.
3. Anniversary Date: the same day and month in succeeding years as the effective date of the lease.
4. Assignment(s): a conveyance of all or a portion of the lessee's record title, non-working interest, or working interest in a lease.

(a) Certification of Net Revenue Interest: the certification by oath of an assignor to the agency that the total net working revenue interest (NRI) in the lease which the assignment affects has not been reduced to less than 80 per cent of 100 per cent NRI. Certification shall only be required for leases issued after April 1, 2005.

(b) Mass Assignment: an assignment that affects more than one lease, including assignments which affect record title, working or non-working interests.

(c) Non-Working Interest Assignment: an assignment of interest in production from a lease other than the agency's royalty, the record title, or the working interest including but not limited to overriding royalties, production payments, net profits interests, and carried interests assignments but excluding liens and security interests.

(d) Record Title Assignment: an assignment of the lessee's interest in a lease which includes the obligation to pay rent, the rights to assign/or relinquish the lease, and the ultimate responsibility to the agency for obligations under the lease.

(e) Working Interest Assignment: a transfer of a non-record title interest in a lease, including but not limited to wellbore assignments, but excepting overriding royalty, oil payment, net-profit, or carried interests or other non-working interests.

5. Board of Trustees: the School and Institutional Trust Lands Board of Trustees created under Section 53C-1-202.

6. Bonus Bid: a payment reflecting an amount to be paid by an applicant in addition to the delay rentals and royalties set forth in a lease in an application as consideration for the issuance of such lease.

7. Committed Lands: a consolidation of all or a portion of lands subject to a lease approved by the director for pooling or unitization which form a logical unit for exploration, development or drilling operations.

8. Delay Rental: a sum of money as prescribed in the lease payable to the agency for the privilege of deferring the commencement of drilling operations or the commencement of production during the term of the lease.

9. Designated Operator: the person or entity that has been granted authority by the record title interest owner(s) in a lease and has been approved by the agency to conduct operations on the lease or a portion thereof.

10. Director: the person designated within the agency who manages the agency in fulfillment of its purposes as set forth in the Act.

11. Effective Date: unless otherwise defined in the lease, the effective date shall be the first day of the month following the date a lease is executed by the agency. An amended, extended or segregated lease will retain the effective date of the original lease.

12. Gas Well: a well capable of producing volumes exceeding 100,000 cubic feet of gas to each barrel of oil from the same producing horizon where both oil and gas are produced; or, a well producing gas only from a formation or producing horizon.

13. Lease: an oil, gas and hydrocarbon lease covering the commodities defined in R850-21-200(1) issued by the agency.

14. Lease Year: the twelve-month period commencing at 12:01 a.m. on the month and day of the effective date of the lease and ending on the last day of the twelfth month at 12 midnight.

15. Leasing Unit: a parcel of trust land lying within one or more sections that is offered for lease as an indivisible unit through a competitive oil and gas lease application process which would constitute one lease when issued.

16. Lessee: a person or entity holding a record title interest in a lease.

17. NGL: natural gas liquids.

18. Other Business Arrangement ("OBA"): an agreement entered into between the agency and a person or entity consistent with the purposes of the Act and approved by the Board of Trustees.

By way of example, but not of limitation, OBAs may be for farmout agreements or joint venture agreements. An agreement for an OBA may be initiated by the agency or by a proponent of an agreement by filing a proposal for an OBA with the agency.

19. Paying Quantities: the gross income from the leased substances produced and sold (after deduction for taxes and lessor's royalty) that exceeds the cost of operation.

20. Qualified Interest Owner: a person or legal entity who meets the requirements of R850-3-200 of these rules.

21. Rental: the amount due and payable on the anniversary of the effective date of a lease in a form dated prior to February 1, 2005 to maintain the lease in full force and effect for the following lease year. This payment may be recouped at the end of a lease year for which production in paying quantities was obtained and payment of royalties in excess of minimum royalties was made.

22. Shut-in Gas Well: a gas well which is physically capable of producing gas in paying quantities, but, for which the producible gas cannot be marketed at a reasonable price due to existing marketing or transportation conditions.

23. Shut-In or Minimum Royalty: the amount of money accruing and payable to the agency in lieu of rental or delay rental beginning from the first anniversary date of the lease on or after the initial discovery of oil or gas in paying quantities on the leasehold or the allocation of production to the leasehold. Minimum royalty accrues beginning from the anniversary date of a lease but is not payable until the end of the year. Actual royalty accruing from a lease or allocated to a unitized or communitized lease during the lease year is credited against the minimum royalty obligation for the lease year. If the royalty from production does not equal or exceed the required minimum royalty for the lease year, the lessee is obligated to pay the difference.

24. Surveyed Lot: an irregular part of a section identified by cadastral survey and maintained in the official records of the agency.

25. Trust Lands: those lands and mineral resources granted by the United States in the Utah Enabling Act to the State of Utah in trust, and other lands and mineral resources acquired by the trust, which must be managed for the benefit of the state's public education system or the institutions designated as beneficiaries.

26. UDOGM: the Division of Oil, Gas and Mining of the Utah State Department of Natural Resources.

27. Except as specifically defined above, the definitions set forth at R850-1-200 shall also be applicable.

R850-21-200. Classification of Oil, Gas and Hydrocarbons. Oil, Gas, and Hydrocarbon leases shall cover oil, natural gas, including gas producible from coal formations or associated with coal bearing formations, and other hydrocarbons (whether the same is found in solid, semi-solid, liquid, vaporous, or any other form) and also including sulfur, helium and other gases not individually described. The oil, gas, and hydrocarbon category shall not include coal, oil shale, tar sands or gilsonite.

#### **R850-21-300. Lease Application Process.**

1. The agency may issue leases competitively, non-competitively or enter into OBAs with qualified interest owners for the development of oil, gas and hydrocarbon resources.

(a) Competitive Bid Offering: when the agency designates leasing units for competitive bidding it shall award leases on the basis of the highest bonus bid per acre made by qualified application.

(i) Minimum Bonus Bid Amount: the minimum acceptable bonus bid for competitive bid offering for leasing units shall be not

less than \$1.00 per acre, or fractional acre thereof, which will constitute the (advance) rental for the first year of the lease.

(ii) Notice of Offering: notices of the offering of lands for competitive bid shall:

(A) run for a period of not less than fifteen (15) consecutive days after the notice is posted in the agency's office;

(B) describe the leasing unit;

(C) indicate the resource available for leasing; and

(D) state the last date on which bids may be received.

(iii) Opening of Bid Applications: bid applications shall be opened in the agency's office at 10 a.m. of the first business day following the last day on which bids may be received.

(iv) Content of Applications: each application shall be submitted in a sealed envelope which clearly identifies:

(A) the competitive bid;

(B) leasing unit number; and,

(C) the date of offering for which the bid is submitted.

(v) The application envelope must:

(A) describe only one leasing unit per application; and,

(B) contain one check for the application fee and a separate check for the amount of the bonus bid.

(vi) Withdrawal of Applications: applicants desiring to withdraw an application which has been filed under these competitive bid filing rules must submit a written request to the agency. If the request is received before sealed bids have been opened, all money tendered by the applicant, except the filing fee, shall be refunded. If a request is received after sealed bids have been opened, and if the applicant is awarded the bid, then unless the applicant accepts the offered lease, all money tendered shall be forfeited to the agency.

(vii) Non-Complying Applications: if the agency determines prior to lease issuance that an application did not comply with these rules at the time of bid opening, the application fee shall be retained by the agency and the application returned to the applicant without further consideration by the agency.

(viii) Identical Bids: in the case of identical successful bids, the agency may award the lease by public drawing or oral auction between the identical bidders, held at the agency's offices.

(b) Non-Competitive Leasing By Over-The-Counter Filing.

(i) The director may designate lands for non-competitive leasing by over-the-counter application if the lands have been offered in a competitive offering and have received no bids. Designated lands may be offered for a period of three (3) months from the date of the opening of bids for which no bid was received for said lands under the competitive bid offering.

(ii) The minimum acceptable offer for over-the-counter applications to lease designated lands shall be not less than \$1 per acre, or fractional acre thereof, which will constitute the delay rental for the first year of the lease.

(iii) Applications for over-the-counter leases, when authorized, shall be filed on approved forms received from the office of the agency or as made available on its web site and delivered for filing in the main office of the agency during office hours. Except as provided, all over-the-counter applications received by personal delivery over the counter, are to be immediately stamped with the exact date and time of filing. All applications presented for filing at the opening of the office for business on any business day are stamped received as of 8 a.m., on that day. All applications received in the first delivery of the U.S. Mail of each business day are stamped received as of 8 a.m. on that day. The time indicated on the time stamp is deemed the time of filing unless the director

determines that the application is materially deficient in any particular way. If an application is determined to be deficient, it will be returned to the applicant with a notice of the deficiency.

If an application is returned as deficient and is resubmitted in compliance with the rules within fifteen (15) days from the date of the determination of deficiency, it shall retain its original filing time. If the application is resubmitted at any later time, it is deemed filed at the time of resubmission.

(iv) Where two or more applications for the same lease contain identical bids and bear a time stamp showing the said applications were filed at the same time, the agency may award the lease by public drawing or oral auction between the identical bidders held at the agency's office.

(v) If an application or any part thereof is rejected, any money tendered for rental of the rejected portion shall be refunded or credited to the applicant minus the application fee.

(vi) An applicant who desires to withdraw its application must submit a written request to the agency. If the request is received prior to the time the agency approves the application, all money tendered by the applicant, except the application fee, shall be refunded. If the request is received after approval of the application, then, unless the applicant accepts the offered lease, all money tendered is forfeited to the agency.

#### **R850-21-400. Availability of Lands for Lease Issuance.**

1. A lease shall not be issued for lands comprising less than a quarter-quarter section or surveyed lot, unless the trust-owned land managed by the agency within any quarter-quarter section or surveyed lot is less than the whole thereof, in which case the lease will be issued only on the entire area owned and available for lease within the quarter-quarter section or surveyed lot.

2. Leases shall be limited to no more than 2560 acres or four sections and must all be located within the same township and range unless a waiver is approved by the director.

3. Any lease may be terminated by the agency in whole or in part upon lessee's failure to comply with any lease term or covenant or applicable laws and rules. Subject to the terms of any lease issued hereunder, any final agency action is appealable pursuant to Section 53C-2-409, in accordance with the provisions of the rules of the agency.

#### **R850-21-500. Lease Provisions.**

The following provisions, terms and conditions shall apply to all leases granted by the agency:

1. Delay Rentals and Rental Credits.

(a) The delay rental rate shall not be for less than \$1 per acre, or fractional acre thereof, per year at the time the lease is offered.

(b) The minimum annual delay rental on any lease, regardless of the amount of acreage, shall in no case be less than \$40.

(c) Delay rental payments shall be paid each year on or before the lease anniversary date, unless otherwise stated in the lease.

(d) Any overpayment of delay rental occurring from the lease applicant's incorrect calculation of acreage of lands described in the lease may, at the option of the agency, be credited toward the applicant's rental account.

(e) The agency may accept lease payments made by any party provided, however, that the acceptance of such payment(s) shall not be deemed to be recognition by the agency of any interest of the payee in the lease. Ultimate responsibility for such payments remains with the record title interest owner.

(f) Rental credits, if any, shall be governed by the terms of the lease which provide for such credits.

2. Royalty Provisions: the production royalty rate shall not be less than 12.5% of gross proceeds minus costs of transportation off lease, at the time the lease is offered.

3. Primary Lease Term: no lease shall establish a primary term in excess of ten (10) years.

4. Continuance of a Lease after Expiration of the Primary Term.

(a) A lease shall be continued after the primary term has expired so long as:

(i) the leased substance is being produced in paying quantities from the leased premises or from other lands pooled, communitized or unitized with committed lands; or

(ii) the agency determines that the lessee or designated operator:

(A) is engaged in diligent operations which are determined by the director to be reasonably calculated to advance or restore production of the leased substance from the leased premises or from other lands pooled, communitized, or unitized with committed lands; and

(B) pays the annual minimum royalty set forth in the lease.

(b) Diligent operations may include cessation of operations not to exceed 90 days in duration or a cumulative period of 180 days in one calendar year.

5. Pooling, Communitization or Unitization of Leases.

(a) Lessees, upon prior written authorization of the director, may commit leased trust lands or portions of such lands to unit, cooperative or other plans of development with other lands.

(b) The director may, with the consent of the lessee, modify any term of a lease for lands that are committed to a unit, cooperative, or other plan of development.

(c) Production allocated to leased trust lands under the terms of a unit, cooperative, or other plan of development shall be considered produced from the leased lands whether or not the point of production is located on the leased trust lands.

(d) The term of all leases included in any cooperative or unit plan of oil and gas development or operation in which the agency has joined, or shall hereafter join, shall be extended automatically for the term of the unit or cooperative agreement. Rentals on leases so extended shall be at the rate specified in the lease, subject to change in rates at the discretion of the director or as may be prescribed in the terms of the lease.

(e) Any lease eliminated from any cooperative or unit plan of development or operation, or any lease which is in effect at the termination of a cooperative or unit plan of development or operation, unless relinquished, shall continue in effect for the fixed term of the lease, or for two (2) years after its elimination from the plan or agreement or the termination thereof, whichever is longer, and so long thereafter as the leased substances are produced in paying quantities. Rentals under such leases shall continue at the rate specified in the lease.

6. Shut-in Gas Wells Producing Gas in Paying Quantities: to qualify as a shut-in gas well capable of producing gas in paying quantities:

(a) a minimum royalty shall be paid in an amount not less than twice the annual minimum royalty provided for in the lease;

(b) the terms of the lease shall provide the basis upon which the minimum royalty is to be paid by the lessee for a shut-in gas well; and

(c) the director may, at any time, require written justification from the lessee that a well qualifies as a shut-in gas well. A shut-in gas well will not extend a lease more than five years beyond the original primary term of the lease.

7. Oil/Condensate/Gas/NGL Reporting and Records Retention.

(a) Notwithstanding the terms of the lease agreements, gas and NGL report payments are required to be received by the agency on or before the last day of the second month succeeding the month of production.

(b) The extension of payment and reporting time for gas and NGL's does not alter the payment and reporting time for oil and condensate royalty which must be received by the agency on or before the last day of the calendar month succeeding the month of production as currently provided in the lease form.

(c) A lessee, operator, or other person directly involved in developing, producing or disposing of oil or gas under a lease through the point of first sale or point of royalty computation, whichever is later, shall establish and maintain records of such activities and make any reports requested by the director to implement or require compliance with these rules. Upon request by the director or the director's designee, appropriate reports, records or other information shall be made available for inspection and duplication.

(d) Records of production, transportation and sales shall be maintained for six (6) years after the records are generated unless the director notifies the record holder that an audit has been initiated or an investigation begun, involving such records. When so notified, records shall be maintained until the director releases the record holder of the obligation to maintain such records.

8. When the agency approves the amendment of an existing lease by substituting a new lease form for the existing form(s), the amended lease will retain the effective date of the original lease.

9. Other lease provisions.

The agency may require, in addition to the lease provisions required by these rules, any other reasonable provisions to be included in the lease as it deems necessary, but which does not substantially impair the lessees' rights under the lease.

#### **R850-21-600. Transfer by Assignment or Operation of Law.**

1. Any lease may be assigned as to all or part of the acreage, to any person, firm, association, or corporation qualified to hold a lease provided, however, that all assignments must be approved by the director. No assignment is effective until approval is given. Any attempted or purported assignment made without approval by the director is void.

2. Transfer by Assignment.

(a) An assignment of either a record title, working or non-working interest in a lease must:

(i) be expressed in a good and sufficient written legal instrument;

(ii) be properly executed, acknowledged and clearly set forth:

(A) the serial number of the lease;

(B) the land involved;

(C) the name and address of the assignee;

(D) the name of the assignor;

(E) the interest transferred;

(iii) be accompanied by a certification that the assignee is a qualified interest owner; and

(iv) include a certification of net revenue interest.

(b) Lessees who are assigning a lease shall:

(i) prepare and execute the assignments in duplicate, complete with acknowledgments;

(ii) provide that each copy of the assignment have attached thereto an acceptance of assignment duly executed by the assignee; and

(iii) provide that all assignments forwarded to or deposited with the agency be accompanied by the prescribed fee.

(c) The director shall approve any assignment of interest which has been properly executed; if the required filing fee is paid for each separate lease in which an interest is assigned, and the assignment complies with the law and these rules, so long as the director determines that approval would not be detrimental to the interests of the trust beneficiaries.

(d) If approval of any assignment is withheld by the director, the transferee shall be notified of such decision and its basis. Any decision to withhold approval may be appealed pursuant to Rule R850-8 or any similar rule in place at the time of such decision.

(e) Any assignment of a portion of a lease, whether of a record title, working or non-working interest, covering less than a quarter-quarter section, a surveyed lot, or an assignment of a separate zone or a separate deposit, shall not be approved.

(f) An assignment shall be effective the first day of the month following the approval of the assignment by the director. The assignor or surety, if any, shall continue to be responsible for performance of any and all obligations as if no assignment had been executed until the effective date of the assignment. After the effective date of any assignment, the assignee is bound by the terms of the lease to the same extent as if the assignee were the original lessee, any conditions in the assignment to the contrary notwithstanding; provided, however, that the approved record title interest owner(s) shall retain ultimate responsibility to the agency for all lease obligations.

(g) A record title assignment of an undivided 100% record title interest in less than the total acreage covered by the lease shall cause a segregation of the assigned and retained portions. After the effective date of the approved assignment, the assignor shall be released or discharged from any obligation thereafter accruing to the assigned lands. Segregated leases shall continue in full force and effect for the primary term of the original lease or as further extended pursuant to the terms of the lease. The agency may re-issue a lease with a new lease number covering the assigned lands for the remaining unexpired primary term. The agency may, in lieu of re-issuing a lease, note the assignment in its records with all lands covered by the original lease maintained with the original lease number, and with each separate tract or interest resulting from an assignment with an additional identifying designation to the original number.

(h) Any assignment which would create a cumulative royalty and other non-working interest in excess of twenty per cent (20%) thereby reducing the net revenue interest in the lease to less than eighty per cent (80%) NRI shall not be approved by the agency.

(i) Mass assignments are allowed, provided:

(i) the requirements set forth in paragraph R850-21-600(2) are met;

(ii) the serial number, the lands covered thereby, and the percent of interest assigned therein are expressly described in an attached exhibit;

(iii) the prescribed fee is paid for each lease affected; and

(iv) a separate mass assignment is filed for each type of interest (record title, working or non-working interest) that is assigned.

(j) The agency shall not accept for filing, mortgages, deeds of trust, financing statements or lien filings affecting leases. To the extent a legal foreclosure upon interests in leases occurs under the terms of such agreements, assignments must be prepared as set forth in this section and filed with the agency, which will then be reviewed and approved in due course.

(k) The agency by approving an assignment does not adjudicate the validity of any assignment as it may affect third parties, nor estop the agency from challenging any assignment which is later adjudicated by a court of competent jurisdiction to be invalid or ineffectual.

### 3. Transfer by Operation of Law.

(a) Death: if an applicant or lessee dies, his/her rights shall be transferred to the heirs, devisees, executor or administrator of the estate, as appropriate, upon the filing of:

(i) a certified copy of the death certificate together with other appropriate documentation to verify change of ownership as required under the probate laws of the state of Utah (Section 75-1-101 et seq.);

(ii) a list containing the serial number of each lease interest affected;

(iii) a statement that the transferee(s) is a qualified interest owner;

(iv) the required filing fee for each separate lease in which an interest is transferred; and

(v) a bond rider or replacement bond for any bond(s) previously furnished by the decedent.

(b) Corporate Merger: if a corporate merger affects any interest in a lease because of the transfer of property of the dissolving corporation to the surviving corporation by operation of law, no assignment of any affected lease is required. A notification of the merger, together with a certified copy of the certificate of merger issued by the Utah Department of Commerce, shall be furnished to the agency, together with a list by serial number of all lease interests affected. The required filing fee must be paid for each separate lease in which an interest is transferred. A bond rider or replacement bond conditioned to cover the obligations of all affected corporations will be required as a prerequisite to recognition of the merger.

(c) Corporate Name Change: if a change of name of a corporate lessee affects any interest in a lease, the notice of name change shall be submitted in writing with a certificate from the Utah Department of Commerce evidencing its recognition of the name change accompanied by a list of lease serial numbers affected by the name change. The required filing fee must be paid for each separate lease in which an interest is transferred. A bond rider or replacement bond, conditioned to cover the obligations of all affected corporations, is required as a prerequisite to recognition of the name change.

### **R850-21-700. Operations Plan and Reclamation.**

1. The lessee or designated operator shall submit to, and must receive the approval of, the agency for a plan of operations prior to any surface disturbance, drilling or other operations which disturb the surface of lands contained in a lease. Said plan shall include, at a minimum, all proposed access and infrastructure locations and

proposed site reclamation. Prior to approval, the agency may require the lessee or designated operator to adopt a special rehabilitation program for the particular property in question. Before the lessee or designated operator shall commence actual drilling operations on any well or prior to commencing any surface disturbance associated with the activity on lands contained within a lease, the operator or lessee or designated operator shall provide a plan of operations to the agency simultaneously with the filing of the application for a permit to drill (APD) with UDOGM. The agency will review any request for drilling operations and will grant approval providing that the contemplated location and operations are not in violation of any rules or order of the agency. Agency approval of the APD for oil, gas or hydrocarbon resources administered by the agency is required prior to approval by UDOGM. Notice of approval by the agency shall be given in an expeditious manner to UDOGM.

2. Prior to approval of the APD, the agency shall require the lessee or designated operator to:

(a) provide when requested, a cultural, paleontological and biological survey on lands under an oil, gas and hydrocarbon lease, including providing the agency a copy of any survey(s) required by other governmental agencies;

(b) provide for reasonable mitigation of impacts to other trust resources occasioned by surface or sub-surface operations on the lease;

(c) negotiate with the agency a surface use agreement, right-of-way agreement, or both for trust lands other than the leased lands where the surface of said lands are necessary for the development of the lease; and

(d) keep a log of geologic data accumulated or acquired by the lessee or designated operator about the land described in the lease. This log shall show the formations encountered and any other geologic information reasonably required by lessor and shall be available upon request by the agency. A copy of the log, as well as any data related to exploration drill holes shall be deposited with the agency at the agency's request.

3. Oil and gas drilling, or other operations which disturb the surface of lands contained within or on the leased lands shall require surface rehabilitation of the disturbed area as described in the plan of operations approved by the agency, and as required by the rules and regulations administered by the UDOGM.

In all cases, the lessee or designated operator shall agree to establish a slope on all excavations to a ratio not steeper than one foot vertically for each two feet of horizontal distance, unless otherwise approved by the agency prior to commencement of operations. This sloping shall be a concurrent part of the operation of the leased premises to the extent that the operation shall not at any time constitute a hazard. All pits, excavations, roads and pads shall be shaped to facilitate drainage and control erosion by following the best management practices. In no case shall the pits or excavations be allowed to become a hazard to persons or livestock. All material removed from the premises shall be stockpiled and be used to fill the pits and for leveling and reclamation of roads and pads, unless consent of the agency to do otherwise is obtained, so at the termination of the lease, the land will as nearly as practicable approximate its original configuration. All drill holes must be plugged in accordance with rules promulgated by UDOGM.

The agency shall require that all topsoil in the affected area be removed, stockpiled, and stabilized on the leased premises until the completion of operations. Upon reclamation, the stockpiled topsoil will be redistributed on the affected area and the land revegetated as

prescribed by the agency. All mud pits shall be filled and materials and debris removed from the site.

4. All lessees or designated operators under oil, gas and hydrocarbon leases shall be responsible for compliance with all laws and notification requirements and operating rules promulgated by UDOGM with regard to oil, gas and hydrocarbon exploration, or drilling on lands within the state of Utah under The Oil and Gas Conservation Act (Section 40-6-1 et seq.). Lessees or designated operators shall fully comply with all the rules or requirements of agencies having jurisdiction and provide timely notifications of operations plans, well completion reports, or other information as may be requested or required by the agency.

#### **R850-21-800. Bonding.**

##### **1. Bond Obligations.**

(a) Prior to commencement of any operations which will disturb the surface of the land covered by a lease, the lessee or designated operator shall post with UDOGM a bond in a form and in the amount set forth in R649-3-1 et seq. and approved by UDOGM to assure compliance with those terms and conditions of the lease and these rules, involving costs of reclamation, damages to the surface and improvements on the surface and all other related requirements and standards set forth in the lease, rules, procedures and policies of the agency and UDOGM.

(b) A separate bond shall be posted with the agency by the lessee or the designated operator to assure compliance with all remaining terms and conditions of the lease not covered by the bond to be filed with UDOGM, including, but not limited to payment of royalties.

(c) These bonds shall be in effect even if the lessee or designated operator has conveyed all or part of the leasehold interest to an assignee(s) or subsequent operator(s), until the bonds are released by UDOGM and the agency either because the lessee or designated operator has fully satisfied bonding obligations set forth in this section or the bond is replaced with a new bond posted by an assignee or designated operator.

(d) Bonds held by the agency shall be in the form and subject to the requirements set forth herein:

##### (i) Surety Bonds.

Surety bonds shall be issued by a qualified surety company, approved by the agency and registered in the state of Utah;

##### (ii) Personal Bonds.

Personal bonds shall be accompanied by:

(A) a cash deposit to the School and Institutional Trust Lands Administration. The agency will not be responsible for any investment returns on cash deposits. Such interest will be retained in the account and applied to the bond value of the account unless the agency has approved the payment of interest to the operator; or

(B) a cashier's check or certified check made payable to the School and Institutional Trust Lands Administration; or

(C) negotiable bonds of the United States, a state, or a municipality. The negotiable bond shall be endorsed only to the order of, and placed in the possession of, the agency. The agency shall value the negotiable bond at its current market value, not at the face value; or

(D) negotiable certificates of deposit. The certificates shall be issued by a federally insured bank authorized to do business in Utah. The certificates shall be made payable or assigned only to the agency both in writing and upon the records of the bank issuing the certificate. The certificates shall be placed in the possession of the agency or held by a federally insured bank authorized to do business

in Utah. If assigned, the agency shall require the banks issuing the certificates to waive all rights of setoff or liens against those certificates; or

(E) an irrevocable letter of credit: Letters of credit shall be issued by a federally insured bank authorized to do business in Utah and will be irrevocable during their terms. Letters of credit shall be placed in the possession of and payable upon demand only to the agency. Letters of credit shall be automatically renewable or the operator shall ensure continuous bond coverage by replacing letters of credit, if necessary, at least thirty (30) days before their expiration date with other acceptable bond types or letters of credit; or

(F) any other type of surety approved by the agency.

#### 2. Bond Amounts.

The bond amount required for an oil, gas and hydrocarbon exploration project to be held by the agency for those lease obligations not covered by the bond held by UDOGM shall be:

(a) a statewide blanket bond in the minimum amount of \$15,000 covering exploration and production operations on all agency leases held by lessee; or

(b) a project bond covering an individual, single-well exploration project involving one or more leases. The amount of the project bond will be determined by the agency at the time lessee gives notice of proposed operations. This bond shall not be less than \$5,000 unless waived in writing by the director.

#### 3. Bond Default.

(a) Where, upon default, the surety makes a payment to the agency of an obligation incurred under the terms of a lease, the face of the bond and surety's liability shall be reduced by the amount of such payment.

(b) After default, where the obligation in default equals or is less than the face amount of the bond(s), the lessee or designated operator shall either post a new bond, restore the existing bond to the amount previously held, or post an adjusted amount as determined by the agency. Alternatively, the lessee or designated operator shall make full payment to the agency for all obligations incurred that are in excess of the face amount of the bond and shall post a new bond in the amount previously held or such other amount as determined by the agency. Operations shall be discontinued until the restoration of a bond or posting of a new bond occurs. Failure to comply with these requirements may subject all leases covered by such bond(s) to be cancelled by the agency.

(c) The agency will not give consent to termination of the period of liability of any bond unless an acceptable replacement bond has been filed or until all terms and conditions of the lease have been met.

(d) Any lessee or designated operator forfeiting a bond is denied approval of any future oil, gas or hydrocarbon exploration on agency lands except by compensating the agency for previous defaults and posting the full bond amount for reclamation or lease performance on subsequent operations as determined by the agency.

4. Bonds may be increased at any time in reasonable amounts as the agency may order, providing the agency first gives lessee thirty (30) days written notice stating the increase and the reason for the increase.

5. The agency may waive the filing of a bond for any period during which a bond meeting the requirements of this section is on file with another agency.

#### **R850-21-900. Failure of Agency's Title.**

Should it be found necessary to reject an application or to terminate an existing lease due to failure of the agency's title, then

only the delay rental paid for the year in which title failure is discovered will be refunded. All other delay rentals and fees paid on the application or lease are forfeited to the agency. Should the agency discover its title failed prior to issuance of a lease offered for competitive bid, the bid amount for the rejected portion of the lands offered will be returned to the applicant but the filing fee will be retained by the agency.

#### **R850-21-1000. Multiple Mineral Development (MMD) Area Designation.**

1. The agency may designate any land under its authority as a multiple mineral development area. In designated multiple mineral development areas the agency may require, in addition to all other terms and conditions of the lease, that the lessee furnish a bond or evidence of financial responsibility as specified by the agency, to assure that the agency and other lessees shall be indemnified and held harmless from and against unreasonable and all unnecessary damage to mineral deposits or improvements caused by the conduct of the lessee on trust lands. Written notice shall be given to all oil, gas and hydrocarbon and other mineral lessees holding a lease for any mineral commodity within the multiple mineral development area. Thereafter, in order to preserve the value of mineral resources the agency may impose any reasonable requirements upon any oil, gas and hydrocarbon or other mineral lessee who intends to conduct any mineral activity within the multiple mineral development area. The lessee is required to submit advance written notice of any activities to occur within the multiple mineral development area to the agency and any other information that the agency may request. All activities within the multiple mineral development area are to be deferred until the agency has specified the terms and conditions under which the mineral activity is to occur and has granted specific permission to conduct the activity. The agency may hold public meetings regarding mineral development within the multiple mineral development area.

2. The agency may grant a lease extension under a multiple mineral development area designation, providing that the lessee or designated operator requests an extension to the agency prior to the lease expiration date, and that the lessee or designated operator would have otherwise been able to request a lease extension as provided in Subsection 53C-2-405(4).

#### **KEY: oil gas and hydrocarbons, administrative procedures, lease provisions, operations**

**April 1, 2005**

**53C-1-302(1)(a)(ii)**

**53C-2 et seq.**

▼ ————— ▼

School and Institutional Trust Lands,  
Administration  
**R850-22**  
Bituminous-Asphaltic Sands and Oil  
Shale Resources

**NOTICE OF PROPOSED RULE**

(New Rule)

DAR FILE NO.: 27613

FILED: 12/23/2004, 15:40

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule has been written to specifically address processes associated with Bituminous-Asphaltic Sands and Oil Shale resources. It replaces Rule R850-20 with respect to these commodities. (DAR NOTE: The proposed repeal of Rule R850-20 is under DAR No. 27611 in this issue.)

SUMMARY OF THE RULE OR CHANGE: This rule applies strictly to the Bituminous-Asphaltic Sands and Oil Shale resources managed by the agency. It contains resource-specific definitions as used by the agency and some new bonding provisions. The "Procedures of Claim for Oil Shale/Bituminous Sands" portion of Rule R850-20 has been removed from this new rule. This rule has also been written with the intent to make it more readable and give better clarity to the processes currently in practice by the agency.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53C-1-302(1)(a)(ii), and Title 53C, Chapter 2 et seq.

## ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: It is anticipated that there will be some savings to the State budget because of the increase in the minimum annual rental which will help offset the administrative costs incurred in managing the leases.
- ❖ LOCAL GOVERNMENTS: No additional costs or savings for local government are anticipated as the provisions of this rule follow current practices of the agency.
- ❖ OTHER PERSONS: Minimum annual rental for the lease of these commodities has been increased from \$20 per year to \$500 per year, regardless of the amount of acreage. Any lessee whose annual rental has been less than \$500 per year will now be required to pay this minimum amount. Also, with the removal from rule the historic incentive to waive royalties on the first 200,000 barrels of production for oil shale or tar sands from the first oil shale/bituminous sands development on trust lands, it could potentially cost that first lessee the amount of the royalties for the first 200,000 barrels. However, this incentive has had no effect in over 30 years, so the reality is that if a process can be developed that will make oil shale or tar sands economical, this incentive would be inconsequential.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The cost for compliance to this new rule will be the increase in minimum annual rental to \$500. This cost could be anywhere from \$1 to \$480 for lessees with a leasehold of less than 500 acres. Also, it would potentially cost the first lessee to commercially produce oil from oil shale or bituminous sands on trust lands the amount of royalties due on the first 200,000 barrels as a result of the removal from rule the waiver of royalties.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Generally, this proposed rule

simply re-promulgates material in a manner specific to Tar Sands and Oil Shale leasing. However, two provisions have been modified which will affect current and prospective lessees: 1) the annual minimum rental is being increased from \$20/year to \$500/year. The intention of this change is to motivate lessees to either put the leases into production, or to drop the leases so that others with the capabilities to produce can have a chance to lease the lands; and 2) the historic incentive to waive royalties on the first 200,000 barrels of production for oil shale or tar sands is being deleted. In over 30 years, this incentive has had no effect. The reality is that if a process can be developed that will make oil shale or tar sands economical, this minor incentive is inconsequential. Also, Section 53C-2-414 authorizes the Director to make rules providing incentives for the development of these resources. The agency intends to promulgate rules in the future that will provide for board concurrence for a lessee desiring to participate in incentive programs for these resources.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

SCHOOL AND INSTITUTIONAL TRUST LANDS  
ADMINISTRATION  
Room 500  
675 E 500 S  
SALT LAKE CITY UT 84102-2818, or  
at the Division of Administrative Rules.

## DIRECT QUESTIONS REGARDING THIS RULE TO:

Thomas B. Faddies at the above address, by phone at 801-538-5150, by FAX at 801-355-0922, or by Internet E-mail at tomfaddies@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 02/14/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 04/01/2005

AUTHORIZED BY: Kevin S. Carter, Director

**R850. School and Institutional Trust Lands, Administration.**  
**R850-22. Bituminous-Asphaltic Sands and Oil Shale Resources.**  
**R850-22-100. Authorities.**

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution, and Utah Code Title 53C et seq. which authorize the Director of the School and Institutional Trust Lands Administration to establish rules for the management of bituminous-asphaltic sands and oil shale resources and for the issuance of leases for such resources on trust lands.

**R850-22-150. Planning.**

Pursuant to Subsection 53C-2-201(1)(a), this category of activity carries no planning obligations by the agency beyond existing rule-based analysis and approval processes. Bituminous-asphaltic sands and oil shale development activities are regulated pursuant to R649.

**R850-22-175. Definitions.**

The following words and terms, when used in Section R850-22 shall have the following meanings, unless otherwise indicated:

1. Act: Utah Code 53C-1 et seq.
2. Agency: School and Institutional Trust Lands Administration or its predecessor agency.
3. Anniversary Date: the same day and month in succeeding years as the effective date of the lease or permit.
4. Beneficiaries: the public school system and other institutions for whom the State of Utah was granted lands in trust by the United States under the Utah Enabling Act.
5. Bonus Bid: a payment reflecting an amount to be paid by an applicant in addition to the rentals and royalties set forth in a lease application as consideration for the issuance of such lease.
6. Assignment(s): a conveyance of all or a portion of the lessee's record title interest or royalty interest in a lease.
  - (a) Certification of Net Revenue Interest: the certification by oath of an assignor to the agency that the total net working revenue interest (NRI) in the lease which the assignment affects has not been reduced to less than 80 per cent of 100 per cent NRI. Certification shall only be required for leases issued after April 1, 2005.
  - (b) Mass Assignment: an assignment that affects more than one lease, including assignments which affect record title, working or non-working interests.
  - (c) Non-Working Interest Assignment: an assignment of interest in production from a lease other than the agency's royalty, the record title, or the working interest including but not limited to overriding royalties, production payments, net profits interests, and carried interests assignments but excluding liens and security interests.
  - (d) Record Title Assignment: an assignment of the lessee's interest in a lease which includes the obligation to pay rent, the rights to assign or relinquish the lease, and the ultimate responsibility to the agency for obligations under the lease.
  - (e) Working Interest Assignment: a transfer of a non-record title interest in a lease, including but not limited to wellbore assignments, but excepting overriding royalty, oil payment, net-profit, or carried interests or other non-working interests.
7. Board of Trustees: the School and Institutional Trust Lands Board of Trustees created under Section 53C-1-202.
8. Committed Lands: a consolidation of all or a portion of lands subject to a lease approved by the director for unitization which forms a logical unit for exploration, development or drilling operations.
9. Designated Operator: the person or entity that has been granted authority by the record title interest owner(s) in a lease and has been approved by the agency to conduct operations on the lease or a portion thereof.
10. Director: the person designated within the agency who manages the agency in fulfillment of its purposes as set forth in the Act.
11. Effective Date: unless otherwise defined in the lease, the effective date shall be the first day of the month following the date a lease is executed by the agency. An amended, extended or segregated lease will retain the effective date of the original lease.
12. Lease: a bituminous-asphaltic sands or oil shale lease covering the commodities defined in R850-22-200 issued by the agency.
13. Lease Year: the twelve-month period commencing at 12:01 a.m. on the month and day of the effective date of the lease and ending on the last day of the twelfth month at 12 midnight.

14. Leasing Unit: a parcel of trust land lying within one or more sections that is offered for lease as an indivisible unit through a competitive lease application process which would constitute one lease when issued.

15. Lessee: a person or entity holding a record title interest in a lease.

16. Other Business Arrangement ("OBA"): an agreement entered into between the agency and a person or entity consistent with the purposes of the Act and approved by the Board of Trustees. By way of example, but not of limitation, OBAs may be for farmout agreements or joint venture agreements. An agreement for an OBA may be initiated by the agency or by a proponent of an agreement by filing a proposal for an OBA with the agency.

17. Over-the-Counter Lease: the issuance of a lease through application on a first come, first served basis.

18. Production in Paying Quantities (also referred to in older mineral leases as Production in Commercial Quantities): production of the leased substance in quantities sufficient to yield revenue in excess of operating costs.

19. Rental: the amount due and payable on or before the anniversary date of a lease to maintain the lease in full force and effect for the following lease year.

20. Record Title: the legal ownership of a mineral lease as established in the records of the agency.

21. Sub-lease: a transfer of a non-record title interest in a mineral lease.

22. Surveyed Lot: an irregular part of a section identified by cadastral survey and maintained in the official records of the agency.

23. Trust Lands: those lands and mineral resources granted by the United States in the Utah Enabling Act to the State of Utah in trust, and other lands and mineral resources acquired by the trust, which must be managed for the benefit of the state's public education system or the institutions designated as beneficiaries.

24. UDOGM: the Division of Oil, Gas and Mining of the Utah State Department of Natural Resources.

25. Except as specifically defined above, the definitions set forth at R850-1-200 shall also be applicable.

R850-22-200. Classification of Bituminous-Asphaltic Sands and Oil Shale. 1. The term "bituminous-asphaltic sands" means rock or sand impregnated with asphalt or heavy oil and is synonymous with the term "tar sands." This category does not cover any substances, either combustible or non-combustible, which are produced in a gaseous or rarefied state at ordinary temperature and pressure conditions other than gas which results from artificial introduction of heat. Nor does this category embrace any liquid hydrocarbon substance which occurs naturally in a liquid form in the earth regardless of depth, including drip gasoline or other natural condensate recovered from gas. The bituminous-asphaltic sands category does not include coal, oil shale, or gilsonite.

2. The oil shale category shall include any sedimentary rock containing kerogen.

**R850-22-300. Lease Application Process.**

1. The agency may issue leases competitively, non-competitively or enter into OBAs with qualified interest owners for the development of bituminous-asphaltic sands and oil shale resources.

(a) Competitive Bid Offering: when the agency designates leasing units for competitive bidding it shall award leases on the basis of the highest bonus bid per acre made by qualified application.

(i) Minimum Bonus Bid Amount: the minimum acceptable bonus bid for competitive bid offering for leasing units shall be not less than \$1.00 per acre, or fractional acre thereof, which will constitute the (advance) rental for the first year of the lease.

(ii) Notice of Offering: notices of the offering of lands for competitive bid shall:

(A) run for a period of not less than fifteen (15) consecutive days after the notice is posted in the agency's office;

(B) describe the leasing unit;

(C) indicate the resource available for leasing; and

(D) state the last date on which bids may be received.

(iii) Opening of Bid Applications: bid applications shall be opened in the agency's office at 10 a.m. of the first business day following the last day on which bids may be received.

(iv) Content of Applications: each application shall be submitted in a sealed envelope which clearly identifies:

(A) the competitive bid;

(B) leasing unit number; and

(C) the date of offering for which the bid is submitted.

(v) The application envelope must:

(A) describe only one leasing unit per application; and,

(B) contain one check for the application fee and a separate check for the amount of the bonus bid.

(vi) Withdrawal of Applications: applicants desiring to withdraw an application which has been filed under these competitive bid filing rules must submit a written request to the agency. If the request is received before sealed bids have been opened, all money tendered by the applicant, except the filing fee, shall be refunded. If a request is received after sealed bids have been opened, and if the applicant is awarded the bid, then unless the applicant accepts the offered lease, all money tendered shall be forfeited to the agency.

(vii) Non-Complying Applications: if the agency determines prior to lease issuance that an application did not comply with these rules at the time of bid opening, the application fee shall be retained by the agency and the application returned to the applicant without further consideration by the agency.

(viii) Identical Bids: in the case of identical successful bids, the agency may award the lease by public drawing or oral auction between the identical bidders, held at the agency's offices.

(b) Non-Competitive Leasing By Over-The-Counter Filing.

(i) The director may designate lands for non-competitive leasing by over-the-counter application if the lands have been offered in a competitive offering and have received no bids.

(ii) The minimum acceptable offer for over-the-counter applications to lease designated lands shall be not less than \$1 per acre, or fractional acre thereof.

(iii) Applications for over-the-counter leases, when authorized, shall be filed on approved forms received from the office of the agency or as made available on its web site and delivered for filing in the main office of the agency during office hours. Except as provided, all over-the-counter applications received by personal delivery over the counter, are to be immediately stamped with the date and time of filing. All applications presented for filing at the opening of the office for business on any business day are stamped received as of 8 a.m., on that day. All applications received in the first delivery of the U.S. Mail of each business day are stamped received as of 8 a.m. on that day. The time indicated on the time stamp is deemed the time of filing unless the director determines that the application is materially deficient in any particular way. If an

application is determined to be deficient, it will be returned to the applicant with a notice of the deficiency.

If an application is returned as deficient and is resubmitted in compliance with the rules within fifteen (15) days from the date of the determination of deficiency, it shall retain its original filing time.

If the application is resubmitted at any later time, it is deemed filed at the time of resubmission.

(iv) Where two or more applications for the same lease contain identical bids and bear a time stamp showing the said applications were filed at the same time, the agency may award the lease by public drawing or oral auction between the identical bidders, held at the agency's office.

(v) If an application or any part thereof is rejected, any money tendered for rental of the rejected portion shall be refunded or credited to applicant, minus the application fee.

(vi) An applicant who desires to withdraw its application must submit a written request to the agency. If the request is received prior to the time the agency approves the application, all money tendered by the applicant, except the application fee, shall be refunded. If the request is received after approval of the application, then, unless the applicant accepts the offered lease, all money tendered is forfeited to the agency.

#### **R850-22-400. Availability of Lands for Lease Issuance.**

1. A lease shall not be issued for lands comprising less than a quarter-quarter section or surveyed lot, unless the trust land managed by the agency within any quarter-quarter section or surveyed lot is less than the whole thereof, in which case the lease will be issued only on the entire area owned and available for lease within the quarter-quarter section or surveyed lot.

2. Leases shall be limited to no more than 2560 acres or four sections and must all be located within the same township and range unless a waiver is approved by the director.

3. Any lease may be terminated by the agency in whole or in part upon lessee's failure to comply with any lease term or covenant or applicable laws and rules. Subject to the terms of any lease issued hereunder, any final agency action is appealable pursuant to Section 53C-2-409, in accordance with the provisions of the rules of the agency.

#### **R850-22-500. Bituminous-Asphaltic Sands and Oil Shale Lease Provisions.**

The following provisions, terms and conditions shall apply to all leases granted by the agency:

1. Rentals and Rental Credits.

(a) The rental rate shall not be for less than \$1 per acre, or fractional acre thereof, per year at the time the lease is offered.

(b) The minimum annual rental on any lease, regardless of the amount of acreage, shall in no case be less than \$500.

(c) Rental payments shall be paid in advance each year on or before the lease anniversary date, unless otherwise stated in the lease.

(d) Any overpayment of rental occurring from the lease applicant's incorrect calculation of acreage of lands described in the lease may, at the option of the agency, be credited toward the applicant's rental account.

(e) The agency may accept lease payments made by any party provided, however, that the acceptance of such payment(s) shall not be deemed to be recognition by the agency of any interest of the payee in the lease. Ultimate responsibility for such payments remains with the record title interest owner.

(f) Rental credits, if any, shall be governed by the terms of the lease which provide for such credits.

2. Royalty Provisions: during the primary term of the lease, the lessee shall pay lessor a production royalty on the basis of eight percent (8%) of the gross value, including all bonuses and allowances received by lessee, of each marketable product produced from the leased substance and sold under a bonafide contract of sale. The royalty may, at the discretion of the lessor, be increased after the ten (10) year primary term at a rate not in excess of one percent (1%) per annum to a maximum of twelve and one-half percent (12.5%).

3. Primary Lease Term: no lease shall establish a primary term in excess of ten (10) years.

4. Continuance of a Lease after Expiration of a Primary Term.

(a) A lease shall be continued after the primary term has expired so long as:

(i) the leased substance is being produced in paying quantities from the leased premises or from other lands communitized or unitized with committed lands; or

(ii) the agency determines that the lessee or designated operator:

(A) is engaged in diligent operations which are determined by the director to be reasonably calculated to advance or restore production of the leased substance from the leased premises or from other lands communitized, or unitized with committed lands; and

(B) pays the annual minimum royalty set forth in the lease.

5. Communitization or Unitization of Leases.

(a) Lessees, upon prior written authorization of the director, may commit leased trust lands or portions of such lands to unit, cooperative or other plans of development with other lands.

(b) The director may, with the consent of the lessee, modify any term of a lease for lands that are committed to a unit, cooperative, or other plan of development.

(c) Production allocated to leased trust lands under the terms of a unit, cooperative, or other plan of development shall be considered produced from the leased lands whether or not the point of production is located on the leased trust lands.

(d) The term of all leases included in any cooperative or unit plan of development or operation in which the agency has joined, or shall hereafter join, shall be extended automatically for the term of the unit or cooperative agreement. Rentals on leases so extended shall be at the rate specified in the lease, subject to change in rates at the discretion of the director or as may be prescribed in the terms of the lease.

(e) Any lease eliminated from any cooperative or unit plan of development or operation, or any lease which is in effect at the termination of a cooperative or unit plan of development or operation, unless relinquished, shall continue in effect for the fixed term of the lease, or for two (2) years after its elimination from the plan or agreement or the termination thereof, whichever is longer, and so long thereafter as the leased substances are produced in paying quantities. Rentals under such leases shall continue at the rate specified in the lease.

6. When the agency approves the amendment of an existing lease by substituting a new lease form for the existing form(s), the amended lease will retain the effective date of the original lease.

7. Other Lease Provisions.

The agency may require, in addition to the lease provisions required by these rules, any other reasonable provisions to be included in the lease as it deems necessary, but which does not substantially impair the lessees' rights under the lease.

**R850-22-600. Transfer by Assignment or Operation of Law.**

1. Any lease may be assigned as to all or part of the acreage, to any person, firm, association, or corporation qualified to hold a lease provided, however, that all assignments must be approved by the director. No assignment is effective until approval is given. Any attempted or purported assignment made without approval by the director is void.

2. Transfer by Assignment.

(a) An assignment of either a record title, working or non-working interest in a lease must:

(i) be expressed in a good and sufficient written legal instrument;

(ii) be properly executed, acknowledged and clearly set forth:

(A) the serial number of the lease;

(B) the land involved;

(C) the name and address of the assignee;

(D) the name of the assignor;

(E) the interest transferred;

(iii) be accompanied by a certification that the assignee is a qualified interest owner; and

(iv) include a certification of net revenue interest.

(b) Lessees who are assigning a lease shall:

(i) prepare and execute the assignments in duplicate, complete with acknowledgments;

(ii) provide that each copy of the assignment have attached thereto an acceptance of assignment duly executed by the assignee; and

(iii) provide that all assignments forwarded to or deposited with the agency be accompanied by the prescribed fee.

(c) The director shall approve any assignment of interest which has been properly executed; if the required filing fee is paid for each separate lease in which an interest is assigned, and the assignment complies with the law and these rules, so long as the director determines that approval would not be detrimental to the interests of the trust beneficiaries.

(d) If approval of any assignment is withheld by the director, the transferee shall be notified of such decision and its basis. Any decision to withhold approval may be appealed pursuant to Rule R850-8 or any similar rule in place at the time of such decision.

(e) Any assignment of a portion of a lease, whether of a record title, working or non-working interest, covering less than a quarter-quarter section, a surveyed lot, or an assignment of a separate zone or a separate deposit, shall not be approved.

(f) An assignment shall be effective the first day of the month following the approval of the assignment by the director. The assignor or surety, if any, shall continue to be responsible for performance of any and all obligations as if no assignment had been executed until the effective date of the assignment. After the effective date of any assignment, the assignee is bound by the terms of the lease to the same extent as if the assignee were the original lessee, any conditions in the assignment to the contrary notwithstanding; provided, however, that the approved record title interest owner(s) shall retain ultimate responsibility to the agency for all lease obligations.

(g) A record title assignment of an undivided 100% record title interest in less than the total acreage covered by the lease shall cause a segregation of the assigned and retained portions. After the effective date of the approved assignment, the assignor shall be released or discharged from any obligation thereafter accruing to the assigned lands. Segregated leases shall continue in full force and effect for the primary term of the original lease or as further

extended pursuant to the terms of the lease. The agency may re-issue a lease with a new lease number covering the assigned lands for the remaining unexpired primary term. The agency may, in lieu of re-issuing a lease, note the assignment in its records with all lands covered by the original lease maintained with the original lease number, and with each separate tract or interest resulting from an assignment with an additional identifying designation to the original number.

(h) Any assignment which would create a cumulative royalty and other non-working interest in excess of twenty per cent (20%) thereby reducing the net revenue interest in the lease to less than eighty per cent (80%) NRI shall not be approved by the agency.

(i) Mass assignments are allowed, provided:

(i) the requirements set forth in paragraph R850-22-600(2) are met;

(ii) the serial number, the lands covered thereby, and the percent of interest assigned therein are expressly described in an attached exhibit;

(iii) the prescribed fee is paid for each lease affected; and

(iv) a separate mass assignment is filed for each type of interest (record title, working or non-working interest) that is assigned.

(j) The agency shall not accept for filing, mortgages, deeds of trust, financing statements or lien filings affecting leases. To the extent a legal foreclosure upon interests in leases occurs under the terms of such agreements, assignments must be prepared as set forth in this section and filed with the agency, which will then be reviewed and approved in due course.

(k) The agency by approving an assignment does not adjudicate the validity of any assignment as it may affect third parties, nor estop the agency from challenging any assignment which is later adjudicated by a court of competent jurisdiction to be invalid or ineffectual.

3. Transfer by Operation of Law.

(a) Death: if an applicant or lessee dies, his/her rights shall be transferred to the heirs, devisees, executor or administrator of the estate, as appropriate, upon the filing of:

(i) a certified copy of the death certificate together with other appropriate documentation to verify change of ownership as required under the probate laws of the state of Utah (Section 75-1-101 et seq.);

(ii) a list containing the serial number of each lease interest affected;

(iii) a statement that the transferee(s) is a qualified interest owner;

(iv) the required filing fee for each separate lease in which an interest is transferred; and

(v) a bond rider or replacement bond for any bond(s) previously furnished by the decedent.

(b) Corporate Merger: if a corporate merger affects any interest in a lease because of the transfer of property of the dissolving corporation to the surviving corporation by operation of law, no assignment of any affected lease is required. A notification of the merger, together with a certified copy of the certificate of merger issued by the Utah Department of Commerce, shall be furnished to the agency, together with a list by serial number of all lease interests affected. The required filing fee must be paid for each separate lease in which an interest is transferred. A bond rider or replacement bond conditioned to cover the obligations of all affected corporations will be required as a prerequisite to recognition of the merger.

(c) Corporate Name Change: if a change of name of a corporate lessee affects any interest in a lease, the notice of name change shall be submitted in writing with a certificate from the Utah Department of Commerce evidencing its recognition of the name change accompanied by a list of lease serial numbers affected by the name change. The required filing fee must be paid for each separate lease in which an interest is transferred. A bond rider or replacement bond, conditioned to cover the obligations of all affected corporations, is required as a prerequisite to recognition of the name change.

#### **R850-22-700. Operations Plan and Reclamation.**

1. All lessees, permittees or designated operators shall submit to the agency, and receive approval for, a plan of operations prior to any surface disturbance, drilling or other operations which disturb the surface of trust lands subject to a lease or permit. The operations plan shall include at a minimum proposed access and infrastructure locations and proposed site reclamation. Prior to approval, the agency may require the lessee, permittee or designated operator to adopt a special rehabilitation program for the particular property in question. Before the lessee, permittee or designated operator shall commence actual operations or prior to commencing any surface disturbance associated with the activity on lands subject to a lease or permit, the permittee, lessee or designated operator shall provide a plan of operations to the agency simultaneously with the filing of any required plan of operations or permit application with UDOGM. The agency will review any request for approval of operations and will grant approval providing that the proposed location and operations are not in violation of any rules or order of the agency. Before operations can commence, approval must be granted by the UDOGM, if required by statute, and by the agency. Notice of approval by the agency shall be given in an expeditious manner to UDOGM.

2. Prior to approval of any surface disturbing operation, the agency may require the lessee, permittee or designated operator to:

(a) provide when requested, a cultural, paleontological and biological survey on lands under lease or permit, including providing the agency a copy of any survey(s) required by other governmental agencies;

(b) provide for reasonable mitigation of impacts to other trust resources occasioned by surface or sub-surface operations on the lease;

(c) negotiate with the agency a surface use agreement, right-of-way agreement, or both for trust lands other than the leased or permitted lands, where the surface of said lands are necessary for the development of the lease or permit.

3. Maintain a record of geologic data accumulated or acquired by the lessee, permittee or designated operator concerning the land described in the lease or permit. This record shall show the formations encountered and any other geologic or development information reasonably required by the agency and shall be available upon request by the agency. A copy of the record, as well as any other data related to geologic exploration or resource development on trust lands shall be deposited with the agency at the agency's request.

4. All operation which disturbs the surface of lands contained within or on trust lands shall be required to be reclaimed by rehabilitation of the disturbed area as described in the plan of operations approved by the agency, and as required by the laws administered by the UDOGM or as required by any other state or federal agency.

(a) In all cases, at a minimum, the lessee, permittee or designated operator shall agree to establish a slope on all excavations to a ratio not steeper than one foot vertically for each two feet of horizontal distance, unless otherwise approved by the agency and UDOGM prior to commencement of operations. The establishment of a stable slope shall be a concurrent part of the operation of the leased or permitted premises such that operations shall at no time constitute a hazard. All pits, excavations, roads and pads shall be shaped to facilitate drainage and control erosion by following the best management practices.

(b) In no case shall the pits or excavations be allowed to become a hazard to persons or livestock. All material removed from trust lands shall be stockpiled and be used to fill the pits and for leveling and reclamation of roads and pads unless consent of the agency, and if applicable of UDOGM, to do otherwise is obtained, so at the termination of the lease, the land will as nearly as practicable approximate its original horizontal and vertical configuration. All drill holes must be plugged in accordance with rules promulgated by UDOGM.

(c) The agency shall require of the lessee, permittee or designated operator that all topsoil in the area of surface disturbance be removed, stockpiled, and stabilized on the trust lands until the completion of operations and satisfactory use in reclamation. At the time of reclamation, the stockpiled topsoil shall be redistributed on the area of surface disturbance and the land revegetated as prescribed by the UDOGM and the agency. All mud pits and temporary debris and settlement basins shall be filled and materials and debris removed from the site.

5. All lessees, permittees or designated operators shall be responsible for compliance with all laws and notification requirements and operating rules promulgated by UDOGM or any other federal or state agency that may have regulatory jurisdiction over mineral development on trust lands or the leased or permitted substance.

### **R850-22-800. Bonding.**

#### **1. Bond Obligations.**

(a) Prior to commencement of any operations which will disturb the surface of the land covered by a lease, the lessee or designated operator shall post with UDOGM, a bond in a form and in the amount set forth in R647-3-1 et seq. and approved by UDOGM to assure compliance with those terms and conditions of the lease and these rules, involving costs of reclamation, damages to the surface and improvements on the surface and all other related requirements and standards set forth in the lease, rules, procedures and policies of the agency and UDOGM.

(b) A separate bond shall be posted with the agency by the lessee or the designated operator to assure compliance with all remaining terms and conditions of the lease not covered by the bond to be filed with UDOGM, including, but not limited to payment of royalties.

(c) These bonds shall be in effect even if the lessee or designated operator has conveyed all or part of the leasehold interest to an assignee(s) or subsequent operator(s), until the bonds are released by UDOGM and the agency either because the lessee or designated operator has fully satisfied bonding obligations set forth in this section or the bond is replaced with a new bond posted by an assignee or designated operator.

(d) Bonds held by the agency shall be in the form and subject to the requirements set forth herein:

#### **(i) Surety Bonds.**

Surety bonds shall be issued by a qualified surety company, approved by the agency and registered in the state of Utah.

#### **(ii) Personal Bonds.**

Personal bonds shall be accompanied by:

(A) a cash deposit to the School and Institutional Trust Lands Administration. The agency will not be responsible for any investment returns on cash deposits. Such interest will be retained in the account and applied to the bond value of the account unless the agency has approved the payment of interest to the operator; or

(B) a cashier's check or certified check made payable to the School and Institutional Trust Lands Administration; or

(C) negotiable bonds of the United States, a state, or a municipality. The negotiable bond shall be endorsed only to the order of, and placed in the possession of, the agency. The agency shall value the negotiable bond at its current market value, not at the face value; or

(D) negotiable certificates of deposit. The certificates shall be issued by a federally insured bank authorized to do business in Utah. The certificates shall be made payable or assigned only to the agency both in writing and upon the records of the bank issuing the certificate. The certificates shall be placed in the possession of the agency or held by a federally insured bank authorized to do business in Utah. If assigned, the agency shall require the banks issuing the certificates to waive all rights of setoff or liens against those certificates; or

(E) an irrevocable letter of credit. Letters of credit shall be issued by a federally insured bank authorized to do business in Utah and will be irrevocable during their terms. Letters of credit shall be placed in the possession of and payable upon demand only to the agency. Letters of credit shall be automatically renewable or the operator shall ensure continuous bond coverage by replacing letters of credit, if necessary, at least thirty (30) days before their expiration date with other acceptable bond types or letters of credit; or

(F) any other type of surety approved by the agency.

#### **2. Bond Amounts.**

The bond amount required for an exploration or development project to be held by the agency for those lease obligations not covered by the bond held by UDOGM shall be:

(a) a project bond covering an individual, single- exploration project involving one or more leases. The amount of the project bond will be determined by the agency at the time lessee gives notice of proposed operations.

#### **3. Bond Default.**

(a) Where, upon default, the surety makes a payment to the agency of an obligation incurred under the terms of a lease, the face of the bond and surety's liability shall be reduced by the amount of such payment.

(b) After default, where the obligation in default equals or is less than the face amount of the bond(s), the lessee or designated operator shall either post a new bond, restore the existing bond to the amount previously held, or post an adjusted amount as determined by UDOGM or the agency. Alternatively, the lessee or designated operator shall make full payment to the agency for all obligations incurred that are in excess of the face amount of the bond and shall post a new bond in the amount previously held or such other amount as determined by the agency. Operations shall be discontinued until the restoration of a bond or posting of a new bond occurs. Failure to comply with these requirements may subject all leases covered by such bond(s) to be cancelled by the agency.

(c) The agency will not give consent to termination of the period of liability of any bond unless an acceptable replacement bond has been filed with UDOGM or the agency, or until all terms and conditions of the lease and all reclamation obligations of UDOGM have been met.

(d) Any lessee or designated operator forfeiting a bond is denied approval of any future oil, gas or hydrocarbon exploration on agency lands except by compensating the agency for previous defaults and posting the full bond amount for reclamation or lease performance on subsequent operations as determined by the agency.

4. Bonds may be increased at any time in reasonable amounts as the agency may order, providing the agency first gives lessee thirty (30) days written notice stating the increase and the reason for the increase.

5. The agency may waive the filing of a bond for any period during which a bond meeting the requirements of this section is on file with another agency.

#### **R850-22-900. Failure of Agency's Title.**

Should it be found necessary to reject an application or to terminate an existing lease due to failure of the agency's title, then only the rental paid for the year in which title failure is discovered will be refunded. All other rentals and fees paid on the application or lease are forfeited to the agency. Should the agency discover its title failed prior to issuance of a lease offered for competitive bid, the bid amount for the rejected portion of the lands offered will be returned to the applicant but the filing fee will be retained by the agency.

#### **R850-22-1000. Multiple Mineral Development (MMD) Area Designation.**

1. The agency may designate any land under its authority as a multiple mineral development area. In designated multiple mineral development areas the agency may require, in addition to all other terms and conditions of the lease, that the lessee furnish a bond or evidence of financial responsibility as specified by the agency, to assure that the agency and other lessees shall be indemnified and held harmless from and against unreasonable and all unnecessary damage to mineral deposits or improvements caused by the conduct of the lessee on trust lands. Written notice shall be given to all lessees holding a lease for any mineral commodity within the multiple mineral development area. Thereafter, in order to preserve the value of mineral resources the agency may impose any reasonable requirements upon any mineral lessee who intends to conduct any mineral activity within the multiple mineral development area. The lessee is required to submit advance written notice of any activities to occur within the multiple mineral development area to the agency and any other information that the agency may request. All activities within the multiple mineral development area are to be deferred until the agency has specified the terms and conditions under which the mineral activity is to occur and has granted specific permission to conduct the activity. The agency may hold public meetings regarding the mineral development within the multiple mineral development area.

2. The agency may grant a lease extension under a multiple mineral development area designation, providing that the lessee or designated operator requests an extension to the agency prior to the lease expiration date, and that the lessee or designated operator would have otherwise been able to request a lease extension as provided in Subsection 53C-2-405(4).

**KEY: bituminous-asphaltic sands, oil shale, administrative procedures, lease provisions**

**April 1, 2005**

**53C-1-302(1)(a)(ii)**

**53C-2 et seq.**



## School and Institutional Trust Lands, Administration **R850-23** Sand, Gravel and Cinders Permits

### NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 27609

FILED: 12/23/2004, 15:00

### RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this new rule is to group provisions governing sand, gravel, and cinders resources with the provisions of the mineral and material resources, thereby allowing Rule R850-130 to be repealed. This rule is commodity-specific and gives better clarity to the processes governing these commodities. (DAR NOTE: The proposed repeal of Rule R850-130 is under DAR No. 27602 in this issue.)

SUMMARY OF THE RULE OR CHANGE: The processes described in this rule are commodity-specific and are written with more clarity so that they can be better understood by the community that is subject to them. This new rule is a re-enactment of the provisions found in Rule R850-130, which is being repealed.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53C-1-302(1)(a)(ii), 53C-2-201(1)(a), and 53C-4-101(1)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: Other than the minimal shared cost of publishing a new edition of the agency's rules, there are no other anticipated costs or savings to the State.

❖ LOCAL GOVERNMENTS: There are no anticipated costs or savings to local government as a result of this new rule. All processes related to this rule were included in Rule R850-130 and they follow the current practices of the agency.

❖ OTHER PERSONS: There are no anticipated costs or savings to other persons as a result of the implementation of this new rule. All processes were previously included in Rule R850-130, and they follow current practices of the agency.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no anticipated costs or savings for compliance with this rule. All of the processes follow current practices of the agency and were included in Rule R850-130 which is being repealed.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule simply combines material from two other rules which are being repealed. Consequently, there is no anticipated impact on business.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

SCHOOL AND INSTITUTIONAL TRUST LANDS  
ADMINISTRATION  
Room 500  
675 E 500 S  
SALT LAKE CITY UT 84102-2818, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Thomas B. Faddies at the above address, by phone at 801-538-5150, by FAX at 801-355-0922, or by Internet E-mail at tomfaddies@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 02/14/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 04/01/2005

AUTHORIZED BY: Kevin S. Carter, Director

**R850. School and Institutional Trust Lands, Administration.**

**R850-23. Sand, Gravel and Cinders Permits.**

**R850-23-100. Authorities.**

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution, Subsections 53C-1-302(1)(a)(ii) and 53C-4-101(1) which authorize the Director of the School and Institutional Trust Lands Administration to prescribe agency objectives, standards and conditions for the issuance of sand, gravel and cinders permits and for conveyances for common varieties of sand, gravel, cinders, and similar materials on trust lands.

**R850-23-125. Mineral Estate Distinctions.**

Common varieties of sand and gravel and volcanic cinder are not considered part of the mineral estate on trust lands in Utah. These commodities may only be obtained through a materials permit approved by the director and in accordance with these rules.

**R850-23-150. Planning.**

Pursuant to Subsection 53C-2-201(1)(a), the agency shall also undertake to complete the following planning obligations, in addition to the rule-based analysis and approval processes that are prescribed by this rule:

1. to the extent required by the Memorandum of Understanding between the State Planning Coordinator and the School and Institutional Trust Lands Administration, submit the proposal for review by the Resource Development Coordinating Committee (RDCC) if the proposed action may have a significant impact upon natural or cultural resources of the state;

2. evaluation of and response to comments received through the RDCC process; and

3. evaluation of and response to any comments received through the solicitation process conducted pursuant to R850-23-500(2).

**R850-23-175. Definitions.**

1. Permit: a sand, gravel or cinders permit.

2. Permittee: a person or entity holding a record title interest in a sand, gravel or cinders permit.

**R850-23-200. Sand, Gravel and Cinders Permits Issued on Agency Lands.**

1. The agency may issue permits or may convey profits a prendre or similar interests on all trust lands, and, when the agency deems it consistent with agency land use plans and trust responsibilities.

2. The agency may issue permits when the sale of the permitted materials would be exempt from sales tax under Subsection 59-12-104(2) or 59-12-104(28).

3. The agency may issue profits a prendre in all other instances according to the procedures and provisions of this chapter.

**R850-23-300. Rentals and Royalties.**

1. Rentals.

(a) Rental rates shall be \$10 per acre, or fractional part thereof, per annum.

(b) The minimum annual rental on permits shall be determined periodically by the agency pursuant to board policy.

2. Royalty Rates and Provisions.

(a) The agency shall charge full market value for all permitted materials purchased under a sand, gravel or cinders permit. Market value will be determined by the agency through analysis of the local market.

(b) The agency, pursuant to board policy, may annually establish minimum royalty rates for permits based on the type of permitted material being removed.

(c) Royalty payments shall be remitted to the agency on a quarterly basis or on such other basis as may be required by the terms and conditions of the permit and shall be accompanied by an agency approved "Production and Settlement Transmittal Form."

**R850-23-400. Terms of Sand, Gravel and Cinders Permits.**

Permits issued under these rules shall be issued for a term which allows for the most beneficial use of the resource, as specified in the terms and conditions of the permit, but no longer than necessary to accomplish the extraction and removal of the materials subject to the sale, and to accomplish any required reclamation work. In no event shall a permit continue for a period of longer than five years without readjustment in its terms and conditions, by the director, as may be determined to be in the best interest of the trust beneficiaries.

**R850-23-500. Application Procedures.**

1. Application Filing.

(a) Applications for permits may be submitted to any office of the agency during office hours pursuant to R850-3.

(b) The director may approve applications for permits for common varieties of sand, gravel or cinders in accordance with the bid solicitation process described in R850-23-500(2), subject to rule R850-23-1400, Over-the-Counter Sales.

## 2. Bid Solicitation Processes.

(a) In the absence of any valid permit, or any valid lease for the same commodity upon the same land, the agency may offer for competitive bid permits when exposing the site to the market could reasonably be expected to produce permitted materials sales. A notice of lands available for competitive filing for permits shall be made in a manner to reasonably solicit competitive bid applications. Notices of competitive filing shall contain the procedure by which the agency shall award the permit.

(b) Upon acceptance of any permit application for common varieties of sand, gravel, or cinders the agency shall solicit competing applications through publication at least once a week for two consecutive weeks in one or more newspapers of general circulation in the county in which the permit is offered. At least 30 days prior to bid opening, certified notification will be sent to permittees of record, adjacent permittees/lessees, and adjacent landowners. Notices will also be posted in the local governmental administrative building or the county courthouse. Notification and advertising shall include the legal description of the parcel and any other information which may create interest in the parcel. The successful applicant shall bear the cost of the advertising.

(c) The agency shall allow all applicants at least 20 days from the date of mailing of notice, as evidenced by the certified mail posting receipt (Postal Service form 3800), within which to submit a sealed bid containing their proposal for the subject parcel. Competing bids shall be evaluated using the criteria found in R850-30-500(2)(g), R850-80-500, and R850-90-200, for special use leases, sales, or exchanges, respectively.

(d) If no competing applications involving sale, lease or exchanges are received by the deadline published pursuant to R850-23-500(2)(b), then the agency shall award the permit based on the following criteria:

- i) amount of bonus bid;
- ii) amount and rate of proposed materials extraction; and
- iii) other criteria and assurances of performances as the agency shall require by permit or advertise prior to bidding.

### **R850-23-600. Permit Execution.**

The permit shall be executed by the applicant and returned to the agency within 30 days from the date of applicant's receipt of the permit. Failure to execute and return the documents to the agency within the 30-day period may result in cancellation of the permit, the forfeiture of any fees, and the discharge of any obligation of the agency arising from the approval of the application.

### **R850-23-700. Sand, Gravel and Cinders Permit Provisions.**

Each permit shall contain provisions necessary to ensure responsible surface management including, but not limited to, the following provisions: The rights of the permittee; rights reserved to the permitter; the term of the permit; payment obligations; transfers of permit interest by permittee; permittee's responsibility for reclamation; terms and conditions of permit forfeiture; and protection of the agency from liability from all actions of the permittee.

### **R850-23-800. Bonding Provisions.**

Prior to the issuance of a permit, or for good cause shown at any time during the term of the permit, and upon 30 days written notice, the applicant or permittee, as the case may be, may be required to post with the agency a bond in the form and amount as

may be determined by the agency to assure compliance with all terms and conditions of the permit.

1. All bonds posted on permits may be used for payment of all monies, rentals, and royalties due to the agency, also for costs of reclamation and for compliance with all other terms and conditions of the permit, and rules pertaining to the permit. The bond shall be in effect even if the permittee has conveyed all or part of the permit interest to a sub-lessee, assignee, or subsequent operator until such time as the permittee fully satisfies the permit obligations, or until the bond is replaced with a new bond posted by the sub-lessee or assignee.

2. Bonds may be increased in reasonable amounts, at any time as the agency may decide, provided the agency first gives permittee 30 days written notice stating the increase and the reason(s) for such increase.

3. Bonds may be accepted in any of the following forms at the discretion of the agency:

(a) Surety bond with an approved corporate surety registered in Utah.

(b) Cash deposit. However, the agency will not be responsible for any investment returns on cash deposits.

(c) Certificates of deposit in the name of "School and Institutional Trust Lands Administration and permittee, c/o permittee's address", with an approved state or federally insured banking institution registered in Utah. Such certificate of deposit must have a maturity date no greater than 12 months, be automatically renewable, and be deposited with the agency; the permittee will be entitled to and receive the interest payments. All certificates of deposit must be endorsed by the permittee prior to acceptance by the director.

(d) Other forms of surety as may be acceptable to the agency.

### **R850-23-900. Insurance Requirements.**

Prior to the issuance of a permit for sand, gravel and cinders, the applicant may be required to obtain insurance of a type and in an amount acceptable to the agency. Proof of insurance shall be in the form of a certificate of insurance containing sufficient information to satisfy the agency that insurance provisions of the permit have been complied with.

1. Such insurance, if required, shall be placed with an insurer with a financial rating assigned by the Best Insurance Guide of A:X or higher, unless this requirement is waived in writing by the agency.

2. The agency shall retain the right to review the coverage, form, and amount of the insurance required at any time and to require the permittee to obtain insurance sufficient in coverage, form, and amount to provide adequate protection upon 30 days written notice.

### **R850-23-1000. Plans of Operation.**

1. Prior to the commencement of any activity authorized by a permit the permittee shall submit, for the director's approval, a plan of operations which shall include the following:

(a) A map or plat showing:

(i) the location and sequence of areas from which material is to be excavated;

(ii) the location of any processing or stationary equipment or improvements which will be placed on the premises;

(iii) transportation and access routes across the premises and adjacent properties;

(iv) the location of any fuel storage tanks; and

(v) the location of stockpile areas.

(b) Elevation drawings of the premises before and after the excavation of materials.

(c) Reclamation plans acceptable to the director, upon review by the School and Institutional Trust Lands Administration.

(d) Copy of any required notification of the proposed operation to the Utah Division of Oil, Gas and Mining and all other government agencies.

(e) Copy of notification of the proposed operation to the owner of the surface estate, owners of the mineral estate, and to all other parties having any valid existing lease or permit upon the same lands.

2. Within 60 days of receiving such plan of operation, the agency shall review the plan and request any additional information necessary to complete the review. The permittee shall not commence any operations which may disturb the lands until the agency has reviewed the plan of operation submitted by the permittee and has given its written approval to the permittee for the commencement of such operations.

3. Each permittee holding a current permit shall within 30 days of each annual anniversary date of the issuance of the permit, submit to the agency a report of all activities under the permit for the previous year. Such report shall include a description of new excavations and surface disturbances, the type and quantity of the materials produced and sold or stockpiled, a description of mined land reclamation work completed or in progress, and any other information requested by the agency to reasonably monitor the permittee's operations under the permit.

#### **R850-23-1050. Conduct of Operations and Compliance with Rules.**

All exploration, mining or other operations performed under any permit, shall be performed in a good and workman like manner to ensure the conservation of the materials deposits, all other deposits of common and uncommon varieties of mineral resources, and other natural resources upon the lands. Each permittee of a permit shall at all times take whatever measures are necessary to be in compliance with all applicable rules of any federal or state agency pursuant to the activities and operations of the permittee or operator upon the lands.

#### **R850-23-1100. Existing Lease and Permit Conversion.**

Existing sand and gravel leases or permits issued prior to the effective date of these rules and in good standing on such date shall continue for the term specified in the lease or permit and shall be subject to the conditions and provisions contained in the lease or permit; provided, however, the agency may allow such lessees/permittees to convert such existing leases or permits to the new permit, providing such conversion will not conflict with the valid existing rights of any other lessee or permittee or owner upon the same lands.

#### **R850-23-1200. Sand, Gravel and Cinders Permit Assignments.**

A permit may be assigned to any person, firm, association, or corporation qualified under R850-3-200, provided that the

assignments are approved by the agency; and no assignment is effective until written approval is given. Any assignment made without such approval is void.

1. An assignment shall take effect the day of the approval of the assignment. On the effective date of any assignment, the assignee is bound by the terms of the permit to the same extent as if such assignee were the original grantee, any conditions in the assignment to the contrary notwithstanding.

2. An assignment must be a sufficient legal instrument, properly executed and acknowledged, and should clearly set forth the easement number, and land involved, and the name and address of the assignee.

3. An assignment shall be executed according to agency procedures.

#### **R850-23-1300. Reclamation Requirements.**

Following the completion of excavations, the agency shall require reclamation measures to stabilize and restore natural surface conditions. Reclamation measures will generally consist of, but not necessarily be limited to, sloping and stabilization of highwalls, contouring of slopes at a ratio not greater than three feet horizontal for each one foot vertical or as otherwise specified by the agency, stabilization of access roads or the closure of access roads as determined by the agency, replacement of natural topsoils, revegetation using a seed mixture and rate of application as may be specified by the agency, removal of all trash and debris, and the prompt removal of all equipment, buildings, and structures owned by the permittee or permittee's agents.

#### **R850-23-1400. Over-the-Counter Sales.**

Permits for common varieties of sand, gravel, or cinders may be issued on an "over-the-counter" basis in areas which have been designated by the director as open for such sales.

#### **R850-23-1500. Termination of Sand, Gravel and Cinders Permit.**

Any permit issued by the agency on trust land may be terminated in whole or in part for failure to comply with any term or condition of the permit or applicable laws or rules. Upon determination by the director that a permit is subject to termination pursuant to the terms of the permit or applicable laws or rules, the director shall issue an appropriate instrument terminating the permit.

#### **R850-23-1600. Collection of Sales Tax.**

The agency shall require all permittees not exempt pursuant to Section 59-12-104 to remit sales taxes with the "Production and Settlement Transmittal Form" submitted pursuant to R850-23-300(2)(c).

#### **KEY: sand, gravel, cinders, permit provisions**

**April 1, 2005**

**53C-1-302(1)(a)(ii)**

**53C-2-201(1)(a)**

**53C-4-101(1)**



School and Institutional Trust Lands,  
Administration  
**R850-24**  
General Provisions: Mineral and  
Material Resources, Mineral Leases  
and Material Permits

**NOTICE OF PROPOSED RULE**

(New Rule)

DAR FILE No.: 27607

FILED: 12/23/2004, 14:55

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this rule is to provide the general provisions that apply to multiple commodities in one "umbrella-type" rule. This should provide greater clarity for the community that is subject to these processes.

**SUMMARY OF THE RULE OR CHANGE:** All of the general provisions that apply to mineral leases and mineral material permits, coal, and geothermal resources have been combined together into one rule in order to provide greater clarity. A new definitions section has been incorporated, insurance provisions that reflect prior agency policy but were missing from Rule R850-20, revised wording for provisions dealing with multiple mineral and material development, and bonding provisions for subleased and assigned leases have been incorporated into this rule. This rule is based on pre-existing, current agency practices which were not explicitly set out in Rule R850-20. (DAR NOTE: The proposed repeal of Rule R850-20 is under DAR No. 27611 in this issue.)

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Subsection 53C-1-302(1)(a)(ii), 53C-2-201(1)(a), and 53C-2-402(1)

**ANTICIPATED COST OR SAVINGS TO:**

❖ **THE STATE BUDGET:** It is not anticipated that there will be any additional cost or savings to the state budget as a result of this rule because it contains the general provisions that apply to a group of commodities. If there is any savings at all, it would be in the area of administrative costs due to a greater simplification of the management process.

❖ **LOCAL GOVERNMENTS:** It is not anticipated that there will be any additional cost or savings to local government because of implementation of this rule as it basically just sets forth the general provisions that apply to the management of multiple commodities.

❖ **OTHER PERSONS:** The implementation of this rule is not anticipated to bring any additional cost or savings to other persons due to the nature of this rule being more of an "umbrella-type" rule which contains general provisions that apply to multiple commodities.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** It is not anticipated that there should be any additional compliance costs for affected persons because this rule contains the general

provisions that apply to multiple commodities. The provisions of this rule are for clarification purposes of current agency practices.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** This rule reproduces material from a rule which is being repealed. It presents it in a clearer, generic form which will serve as an umbrella rule for commodity-specific rules which are also being promulgated concurrently.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

SCHOOL AND INSTITUTIONAL TRUST LANDS  
ADMINISTRATION  
Room 500  
675 E 500 S  
SALT LAKE CITY UT 84102-2818, or  
at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

Thomas B. Faddies at the above address, by phone at 801-538-5150, by FAX at 801-355-0922, or by Internet E-mail at tomfaddies@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 02/14/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 04/01/2005

AUTHORIZED BY: Kevin S. Carter, Director

**R850. School and Institutional Trust Lands, Administration. R850-24. General Provisions: Mineral and Material Resources, Mineral Leases and Material Permits.**

**R850-24-100. Authorities.**

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution, and Subsections 53C-1-302(1)(a)(ii) and 53C-2-402(1) of the School and Institutional Trust Lands Management Act which authorize the Director of the School and Institutional Trust Lands Administration to establish rules for the issuance of mineral leases or material permits and management of trust lands and mineral and material resources.

**R850-24-125. Planning.**

Pursuant to Subsection 53C-2-201(1)(a), this category of activity carries no planning obligations by the agency beyond existing rule-based analysis and approval processes. Mineral and material development activities are regulated pursuant to R645, R647, and R649.

**R850-24-150. Scope - Mineral Estate Distinctions.**

1. For purposes of this section, mineral and material resources include all hardrock minerals and building stone; coal; and geothermal resources. Additional rules specific to these categories are found in section R850-25 for hardrock and material resources; section R850-26 for coal; and section R850-27 for geothermal

resources. These general provisions do not cover oil, gas and hydrocarbons; bituminous-asphaltic sands and oil shale; or sand, gravel and cinders.

2. Common varieties of sand and gravel and volcanic cinder are not considered part of the mineral estate on trust lands in Utah. These commodities may only be obtained through a sand and gravel or volcanic cinder permit approved by the agency, pursuant to Section R850-23.

#### **R850-24-175. Definitions.**

The following words and terms, when used in sections R850-24 through R850-27 of this chapter shall have the following meanings, unless otherwise indicated:

1. Act: the School and Institutional Trust Lands Management Act, Utah Code Sections 53C-1 et seq.

2. Agency: School and Institutional Trust Lands Administration or its predecessor agency.

3. Anniversary Date: the same day and month in succeeding years as the effective date of the lease or permit.

4. Assignments and Transfers of Interest:

(a) Assignment: a transfer of all or a portion of the lessee's/permittee's record title interest in a mineral lease or material permit.

(b) Assignment of Overriding Interests: a transfer of an interest in a mineral lease or material permit that creates a right to share in the proceeds of production from the lease or permit, but confers no right to enter upon the leased or permitted lands or to conduct exploration, development or mining operations on the lands.

(c) Partial Assignment: an assignment of the lessee's record title interest in a part of the lands in a mineral lease or material permit and a segregation of the assigned lands into a separate lease or permit.

(d) Sublease/Operating Rights Assignment: a transfer of a non-record title interest in a mineral lease or materials permit, which authorizes the holder to enter upon the leased or permitted lands to conduct exploration, development and mining operations, but does not alter the relationship imposed by a lease on the lessor and the lessee.

(e) Transfer of Interest: any conveyance of an interest in a mineral lease or material permit by assignment, partial assignment, sublease, operating rights assignment, or other agreement.

5. Beneficiaries: the public school system and other institutions for whom the State of Utah was granted lands in trust by the United States under the Utah Enabling Act.

6. Board of Trustees: the board created under Utah Code Section 53C-1-202.

7. Bonus Bid: a payment reflecting an amount to be paid by the applicant in addition to the rentals and royalties set forth in a lease or permit as consideration for the issuance of such lease or permit.

8. Designated Operator: the person or entity that has been granted authority by the record title interest owner(s) in a lease or permit and has been approved by the agency to conduct operations on the lease, permit or a portion thereof.

9. Director: the director as defined in Utah Code Subsection 53C-1-103(3) and Sections 53C-1-301 - 303, or a person to whom the director has delegated authority.

10. Effective Date: unless otherwise defined in the lease or permit, the effective date shall be the first date of the month following the date a lease or permit is executed. An amended,

extended, segregated or readjusted lease or permit will retain the effective date of the original lease or permit.

11. Lessee: a person or entity holding a record title interest in a mineral lease under R850-25, coal lease under R850-26, or geothermal steam lease under R850-27.

12. Mining Unit: a consolidation of trust mineral lands approved by the director forming a logical exploration, development, or mining operation.

13. Other Business Arrangement (OBA): an agreement entered into between the agency and a person or entity consistent with the purposes of the Act and approved by the Board of Trustees. By way of example, but not of limitation, OBAs may be for farmout agreements or joint venture agreements. An agreement for an OBA may be initiated by the agency or by a proponent of an agreement by filing a proposal for an OBA with the agency's assistant director for minerals or other designated person.

14. Over-the-Counter Permits: the issuance of a material permit through open sales on a first-come, first-served basis.

15. Permittee: a person or entity holding a record title interest in a material permit under R850-25.

16. Record Title Interest: a lessee's/permittee's interest in a lease/permit which includes the obligation to pay rent, the rights to assign or relinquish the lease/permit, and the ultimate responsibility to the agency for obligations under the lease or permit.

17. Sublease: a transfer of a non-record title interest in a mineral lease or material permit.

18. Surveyed Lot: an irregular part of a section identified by cadastral survey and maintained in the official records of the agency.

19. Trust Lands: those lands and mineral resources granted by the United States in the Utah Enabling Act to the State of Utah in trust, and other lands and mineral resources acquired by the trust, which must be managed for the benefit of the state's public education system or the institutions designated as beneficiaries.

20. UDOGM: the Division of Oil, Gas and Mining of the Utah Department of Natural Resources.

#### **R850-24-200. Insurance Requirements.**

Prior to the issuance of a permit for sand, gravel and cinders, the applicant may be required to obtain insurance of a type and in an amount acceptable to the agency. Proof of insurance shall be in the form of a certificate of insurance containing sufficient information to satisfy the agency that insurance provisions of the permit have been complied with.

1. Such insurance, if required, shall be placed with an insurer with a financial rating assigned by the Best Insurance Guide of A:X or higher, unless this requirement is waived in writing by the agency.

2. The agency shall retain the right to review the coverage, form, and amount of the insurance required at any time and to require the permittee to obtain insurance sufficient in coverage, form, and amount to provide adequate protection upon 30 days written notice.

#### **R850-24-300. Failure of Agency's Title.**

Should an application be rejected or an existing mineral lease or material permit be terminated due to failure of the agency's title, then only rental paid for the year in which title failure is discovered shall be refunded. All other rentals and fees paid on the application, mineral lease, or material permit shall be forfeited to the agency.

**R850-24-400. Preference Rights for Unleased Mineral or Material.**

1. Any lessee or permittee who discovers any mineral or material on lands leased or permitted from the agency which are not included within that lease or permit shall have a preference right to a lease or permit covering the unleased mineral or unpermitted material, provided the unleased mineral or unpermitted material at the time of discovery is not included within a lease or permit application by another party.

2. The preference right lease or permit is subject to the rental, royalty, and development requirements provided in these rules and in the lease or permit form.

3. The preference right shall not extend to any unleased mineral or unpermitted material which have been withdrawn from leasing or permitting.

4. The preference right shall continue for a period of 60 days after the discovery of the unleased mineral or unpermitted material, provided the applicant notifies the agency within ten (10) days after the discovery and makes application to lease the unleased mineral or permit the unpermitted material within the sixty (60) day period after date of discovery.

**R850-24-500. Multiple Mineral and Material Development (MMD) Area.**

The agency may designate any land under its authority as a multiple mineral development area (MMDA).

1. In designated MMDAs, the agency may require, in addition to all other terms and conditions of a mineral lease or material permit, that the lessee or permittee in an area capable of multiple mineral or material development furnish a bond beyond that required in subsection R850-24-600(1)(a) or evidence of financial responsibility as specified by the agency, to assure that the agency and other mineral lessees, material permittees, sand & gravel permittees under R850-23, or bituminous-asphaltic sands lessees under R850-22 be indemnified and held harmless from and against all unreasonable and unnecessary damage to the leased resource, mineral or material deposits or improvements caused by the conduct of the lessee/permittee on trust lands.

2. Where a lessee/permittee intends to conduct multiple mineral or material development activities, the lessee/permittee shall:

(a) submit advance written notice to the agency and to other lessees/permittees holding a lease or permit for any mineral commodity within the MMDA of any activities that are to occur within the multiple mineral or material development area.

3. All activities within the MMDA are to be deferred until the agency has specified the terms and conditions under which the mineral activity is to occur and has granted specific written permission to conduct the activity.

4. To preserve the value of the mineral or material resources, the agency may impose additional requirements upon any lessee/permittee, or designated operator who intends to conduct any multiple mineral or material development activity within a multiple mineral or material development area.

5. The agency may hold public meetings regarding the mineral or material development in a multiple mineral or material development area.

6. The agency may grant an extension to a mineral lease or material permit in a multiple mineral or material development area provided that the mineral lessee, material permittee, or designated operator requests an extension prior to the expiration date of the

lease or permit, and that the lessee, permittee, or designated operator would have otherwise been able to request a mineral lease or material permit extension as provided in the Act.

**R850-24-600. Bonding.****1. Bond Obligations.**

(a) Prior to commencement of any operations which will disturb the surface of the land covered by a mineral lease or material permit, the lessee, permittee, or designated operator shall post with the Utah Division of Oil, Gas and Mining a bond in the form and in the amount set forth in R647-3-1 et seq. and approved by UDOGM to assure compliance with those terms and conditions of the mineral lease or material permit involving costs of reclamation, damages to the surface and improvements on the surface, and all other requirements and standards set forth in the mineral lease, material permit, rules, procedures, and policies of the agency and the Utah Division of Oil, Gas, and Mining.

(b) A separate bond may be posted with the agency by the lessee or the designated operator to assure compliance with all remaining terms and conditions of the lease or permit not covered by the bond to be filed with UDOGM, including but not limited to payment of rentals and royalties.

(c) These bonds shall remain in effect even if the mineral lessee, material permittee, or designated operator has conveyed all or part of the leasehold interest to a sublessee(s), assignee(s), or subsequent operator(s), until the bond is released by UDOGM or the agency either because the lessee, permittee, or designated operator has fully satisfied the bonding obligations set forth in this section or the bond is replaced with a new approved bond posted by a sublessee, assignee, or new designated operator.

(d) The agency may waive the filing of a bond for any period during which a bond meeting the requirements of this section is on file with another agency.

(e) Bonds held by the agency shall be in the form and subject to the requirements set forth herein:

(i) Surety Bonds: shall be issued by a qualified surety company, approved by the agency and registered in the state of Utah;

(ii) Lessee/Permittee Bonds: shall be accompanied by:

(A) a cash deposit to the School and Institutional Trust Lands Administration. The agency will not be responsible for any investment returns on cash deposits. Such interest will be retained in the account and applied to the bond value of the account unless the agency has approved the payment of interest to the operator; or

(B) a cashier's check made payable to the School and Institutional Trust Lands Administration; or

(C) negotiable bonds of the United States, a state, or a municipality. The negotiable bond shall be endorsed only to the order of, and placed in the possession of, the agency. The agency shall value the negotiable bond at its current market value, not at the face value; or

(D) negotiable certificates of deposit. The certificates shall be issued by a federally insured bank authorized to do business in Utah. The certificates shall be made payable or assigned only to the agency both in writing and upon the records of the bank issuing the certificate. The certificates shall be placed in the possession of the agency or held by a federally insured bank authorized to do business in Utah. If assigned, the agency shall require the banks issuing the certificates to waive all rights of setoff or liens against those certificates; or

(E) an irrevocable letter of credit. Letters of credit shall be issued by a federally insured bank authorized to do business in Utah and will be irrevocable during their terms. Letters of credit shall be placed in the possession of and payable upon demand only to the agency. Letters of credit shall be automatically renewable or the operator shall ensure continuous bond coverage by replacing letters of credit, if necessary, at least thirty (30) days before their expiration date with other acceptable bond types or letters of credit; or

(F) any other type of surety approved by the agency.

### 2. Increased amount of bonds.

The agency may increase the required bond amount at any time. The lessee, permittee, or designated operator shall be given thirty (30) days written notice stating the reason(s) for the increase and the new bond amount.

### 3. Bond Default.

(a) Where, upon default, the surety makes a payment to the agency of an obligation incurred under the terms of a mineral lease or material permit, the face of the bond and the surety's liability shall be reduced by the amount of such payment.

(b) After default, where the obligation in default equals or is less than the face amount of the bond(s), the lessee, permittee, or the designated operator, shall either post a new bond, restore the existing bond to the amount previously held, or post an adjusted amount as determined by the agency. Alternatively, the lessee, permittee, or designated operator, shall make full payment to the agency for all obligations incurred that are in excess of the face amount of the bond and shall post a new bond in the amount previously held or such other amount as determined by the agency. Operations shall be discontinued until the restoration of a bond or posting of a new bond occurs. Failure to comply with these requirements may subject all mineral leases or material permits covered by such bond(s) to be cancelled by the agency.

(c) The agency will not give consent to termination of the period of liability of any bond unless an acceptable replacement bond has been filed or until all the terms and conditions of the mineral lease or material permit have been met.

(d) Any lessee, permittee, or designated operator forfeiting a bond shall be denied approval of any future exploration or mining on trust-owned lands, except by compensating the agency for previous defaults and posting the full bond amount required by the agency.

## **R850-24-700. Operations Plan and Reclamation.**

1. All lessees, permittees or designated operators shall submit to the agency, and receive approval for, a plan of operations prior to any surface disturbance, drilling or other operations which disturb the surface of trust lands subject to a lease or permit. The operations plan shall include at a minimum proposed access and infrastructure locations and proposed site reclamation. Prior to approval, the agency may require the lessee, permittee or designated operator to adopt a special rehabilitation program for the particular property in question. Before the lessee, permittee or designated operator shall commence actual operations or prior to commencing any surface disturbance associated with the activity on lands subject to a lease or permit, the permittee, lessee or designated operator shall provide a plan of operations to the agency simultaneously with the filing of any required plan of operations or permit application with UDOGM. The agency will review any request for approval of operations and will grant approval providing that the proposed location and operations are not in violation of any rules or order of the agency. Before operations can commence, approval must be granted by the UDOGM, if required by statute, and by the agency. Notice of

approval by the agency shall be given in an expeditious manner to UDOGM.

2. Prior to approval of any surface disturbing operation, the agency may require the lessee, permittee or designated operator to:

(a) provide when requested, a cultural, paleontological and biological survey on lands under lease or permit, including providing the agency a copy of any survey(s) required by other governmental agencies;

(b) provide for reasonable mitigation of impacts to other trust resources occasioned by surface or sub-surface operations on the lease;

(c) negotiate with the agency a surface use agreement, right-of-way agreement, or both for trust lands other than the leased or permitted lands, where the surface of said lands are necessary for the development of the lease or permit.

3. Maintain a record of geologic data accumulated or acquired by the lessee, permittee or designated operator concerning the land described in the lease or permit. This record shall show the formations encountered and any other geologic or development information reasonably required by the agency and shall be available upon request by the agency. A copy of the record, as well as any other data related to geologic exploration or resource development on trust lands shall be deposited with the agency at the agency's request.

4. All operation which disturbs the surface of lands contained within or on trust lands shall be required to be reclaimed by rehabilitation of the disturbed area as described in the plan of operations approved by the agency, and as required by the laws administered by the UDOGM or as required by any other state or federal agency.

(a) In all cases, at a minimum, the lessee, permittee or designated operator shall agree to establish a slope on all excavations to a ratio not steeper than one foot vertically for each two feet of horizontal distance, unless otherwise approved by the agency and UDOGM prior to commencement of operations. The establishment of a stable slope shall be a concurrent part of the operation of the leased or permitted premises such that operations shall at no time constitute a hazard. All pits, excavations, roads and pads shall be shaped to facilitate drainage and control erosion by following the best management practices.

(b) In no case shall the pits or excavations be allowed to become a hazard to persons or livestock. All material removed from trust lands shall be stockpiled and be used to fill the pits and for leveling and reclamation of roads and pads unless consent of the agency, and if applicable of UDOGM, to do otherwise is obtained, so at the termination of the lease, the land will as nearly as practicable approximate its original horizontal and vertical configuration. All drill holes must be plugged in accordance with rules promulgated by UDOGM.

(c) The agency shall require of the lessee, permittee or designated operator that all topsoil in the area of surface disturbance be removed, stockpiled, and stabilized on the trust lands until the completion of operations and satisfactory use in reclamation. At the time of reclamation, the stockpiled topsoil shall be redistributed on the area of surface disturbance and the land revegetated as prescribed by the UDOGM and the agency. All mud pits and temporary debris and settlement basins shall be filled and materials and debris removed from the site.

5. All lessees, permittees or designated operators shall be responsible for compliance with all laws and notification requirements and operating rules promulgated by UDOGM or any

other federal or state agency that may have regulatory jurisdiction over mineral development on trust lands or the leased or permitted substance.

**R850-24-800. Transfer by Assignment, Sublease or Otherwise and Overriding Royalties.**

Any mineral lease or material permit may be transferred as to all or part of the acreage, to any person, or entity firm, association, or corporation qualified to hold a lease or permit, provided however, that all transfers of interest are approved by the director. No transfer of interest is effective until written approval is given. Any transfer of interest made without approval is void.

1. The director shall not withhold approval of any transfer of interest which has been properly executed, for which the required filing fee has been paid for each separate lease or permit in which an interest is transferred, and the transfer complies with the law and these rules, unless the director determines that approval would interfere with the development of the mineral or material resources, or be detrimental to the interests of the trust beneficiaries.

(a) If approval of any transfer is withheld by the director, the transferee shall be notified of such decision and the reason(s) therefore. Any decision to withhold approval may be appealed pursuant to R850-8 or any similar rule in place at the time of such decision.

2. Unless otherwise authorized by the agency, a transfer of interest of a portion of a mineral lease or material permit covering less than a quarter-quarter section, a surveyed lot, an assignment of a separate zone or of a separate deposit will not be approved.

3. A transfer of interest shall take effect the first day of the month following the approval of the transfer by the director. The assignor, sublessor or surety, if any, shall continue to be responsible for performance of any and all obligations as if no transfer of interest had been executed until the effective date of the transfer. After the effective date of any transfer, the transferee is bound by the terms of the mineral lease or material permit to the same extent as if the transferee were the original lessee/permittee, any conditions in the transfer agreement to the contrary notwithstanding.

4. A partial assignment of any mineral lease or material permit shall segregate the assigned or retained portions thereof and, after the effective date, release or discharge the assignor from any obligation thereafter accruing with respect to the assigned lands. Segregated leases or permits shall continue in full force and effect for the primary term of the original lease or permit or as further extended pursuant to the terms of the lease or permit.

(a) The agency may re-issue a lease with a new lease number covering the assigned lands for the remaining unexpired primary term. The agency may, in lieu of re-issuing a lease, note the partial assignment in its records with all lands covered by the original lease maintained with the original lease number, and with each separate tract or interest resulting from an assignment with an additional identifying designation to the original lease number.

5. A transfer of interest in a mineral lease or material permit or of an overriding royalty must be a good and sufficient legal instrument, properly executed and acknowledged, and shall clearly set forth the serial number of the lease or permit, the land involved, the name and address of the transferee, and the interest transferred.

6. A transfer of interest must affect or concern only one mineral lease or material permit or a portion thereof.

7. Any transfer of interest which would create a cumulative overriding royalty in excess of 20% will not be approved by the agency. Any agreement to create or any assignment creating

overriding royalties or payments out of production removed or sold from the leased or permitted lands is subject to approval by the agency, after notice and hearing, to require the proper parties thereto to suspend or modify the royalties or payments out of production in such a manner as may be reasonable when and during such period of time as they may constitute any undue economic burden upon the reasonable operations of the mineral lease or material permit.

8. Mineral lessees or material permittees who are transferring an interest in their mineral lease or material permit shall:

(a) prepare and execute the transfer of interest agreement(s) in duplicate, complete with acknowledgments;

(b) provide that each copy of the transfer of interest agreement have attached thereto an acceptance of transfer duly executed by the transferee; and

(c) provide that all transfer of interest agreements forwarded to or deposited with the agency be accompanied by the prescribed fee.

9. If an applicant, lessee, or permittee dies, his/her rights shall be transferred to the heirs, devisees, executor or administrator of the estate, as appropriate, upon the filing of a death certificate together with other appropriate documentation as the agency may require to verify change of ownership, and a list, by serial number of all mineral lease or material permit interests affected and a statement that all parties are qualified to do business with the agency. The required filing fee must be paid for each separate mineral lease or material permit in which an interest is transferred. A bond rider or replacement bond may be required by the agency for any bond(s) previously furnished by the decedent.

10. If a corporate merger affects mineral leases or material permits where the transfer of property of the dissolving corporation to the surviving corporation is accomplished by operation of law, no transfer of any affected lease permit is required. A notification of the merger shall be furnished with a list, by serial number of all lease or permit interests affected. The required filing fee must be paid for each separate lease or permit in which an interest is transferred. A bond rider or replacement bond conditioned to cover the obligations of all affected corporations may be required by the agency as a prerequisite to recognition of the merger.

11. If a change of name of a lessee or permittee affects mineral leases or material permits the notice of name change shall be submitted in writing with appropriate documentation evidencing the name change accompanied by a list of leases or permits affected by the name change. The required filing fee must be paid for each separate lease or permit subjected to a transfer of interest. A bond rider or replacement bond to accommodate the name change, conditioned to cover the obligations of all affected corporations may be required by the agency as a prerequisite to recognition of the change of name.

12. Pre-approval by the agency of a transfer of interest may be sought by the lessee/permittee, and if pre-approval is granted in writing by the director, it shall be binding on the agency subject to conclusion of the particular transfer for which such pre-approval was granted.

**R850-24-900. Lease Non-Execution or Cancellation - Fees Forfeited.**

In the event that applicant fails to sign and return a mineral lease or material permit as instructed by the agency, or a lease is cancelled for any other reason, all fees, advance rentals, and advance minimum royalties are forfeited by the applicant, lessee or permittee unless non-forfeiture or a refund is approved by the director.

**R850-24-1000. Readjustment of Leases and Permits.**

1. All mineral leases and material permits shall contain a provision setting forth the agency's right to readjust the terms and provisions of the mineral lease or the material permit on a periodic basis. The director shall establish as a term of the lease or the permit a schedule for readjustment at the time the lease or permit is offered. A mineral lease which is continued beyond its primary term shall remain subject to such readjustment provision(s).

2. All terms and conditions of a mineral lease and a material permit are subject to readjustment by the agency, including the amount of rent, minimum rental, royalty, minimum royalty, or any other provision as provided in the lease or permit.

3. The terms of the mineral lease or material permit, if readjusted, shall become effective as of the anniversary date specified for readjustment set forth in the lease or permit upon written notification of the readjusted terms.

4. Notice of intent to exercise the agency's right to readjust under the terms of the lease or permit as of the specified anniversary date is timely given if given in writing prior to the specified anniversary date set forth in the lease or permit.

5. The agency shall have up to one year after exercising its option to readjust to review and communicate in writing the final terms of the lease or permit as readjusted.

6. Unless otherwise approved by the director, the lease or permit shall incorporate the terms of the current agency mineral lease or material permit form at the time of readjustment.

7. Failure of the lessee or permittee to accept or appeal the terms of any readjustment within 60 days of mailing by the agency to the last known address of the lessee or permittee, as reflected in the records of the agency, shall be considered a violation of the terms of the lease or permit and shall subject the same to forfeiture.

8. In the event of a conflict between this section and the terms of a readjustment provision in any lease or permit, the lease or permit terms shall supersede to the extent of the conflict.

9. A lessee or permittee may request a readjustment of a lease or permit, and if the director finds the readjustment to be in the best interest of the beneficiaries, such readjustment shall be made.

**KEY: mineral lease, material permit, mineral resources, lease operations**

**April 1, 2005**

**53C-1-302(1)(a)(ii)**

**53C-2-201(1)(a)**

**53C-2-402(1)**



School and Institutional Trust Lands,  
Administration  
**R850-25**

Mineral Leases and Materials Permits

**NOTICE OF PROPOSED RULE**

(New Rule)

DAR FILE NO.: 27606

FILED: 12/23/2004, 14:53

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this new rule is to replace Rules R850-20 and R850-130 with commodity-specific rules for mineral and material resources. The intent of this is to give greater clarity to provisions that regulate these resources. (DAR NOTE: The proposed repeal of Rule R850-20 is under DAR No. 27611 and the proposed repeal of R850-130 is under DAR No. 27602 in this issue.)

**SUMMARY OF THE RULE OR CHANGE:** The classification of mineral and material substances have been rewritten to give greater distinction of the different types of resources. The minimum annual rental for mineral leases has been increased to \$500 per year. Provisions for continuance after expiration of the primary term, readjustment of lease terms, and the operations plan are specific to this commodity rather than the generalities that previously existed.

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Subsections 53C-1-302(1)(a)(ii), 53C-2-201(1)(a), and 53C-2-402(1)

**ANTICIPATED COST OR SAVINGS TO:**

❖ **THE STATE BUDGET:** Because of the increase in the minimum annual rental, it is anticipated that there will be a savings to the State budget of up to \$480 per leasehold or permitted area of less than 500 acres. It is anticipated that the administrative costs of managing these smaller leaseholds and permits will be offset by this savings.

❖ **LOCAL GOVERNMENTS:** It is not anticipated that there will be any additional cost or savings to local government with the implementation of this new rule unless the local government is the lessee or permittee of a leasehold or permitted area of less than 500 acres. In that scenario, the increased cost to them would be the difference between their current annual rental and the proposed \$500 minimum annual rental per year.

❖ **OTHER PERSONS:** It is anticipated that with the increase in the minimum annual rental for mineral leases and materials permits to \$500 per year, any lessee or permittee with a leasehold or permitted area of less than 500 acres will experience an increase from their current annual rental to the proposed \$500 minimum annual rental \$480 per year.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** It is anticipated that the costs for mineral lessees or materials permittees of a leasehold or permitted area of less than 500 acres to comply with this new rule will be the difference between their current annual rental and the proposed \$500 minimum annual rental per year.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** This rule simply combines material from two other rules which are being repealed. Consequently, there is no anticipated impact on business.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

SCHOOL AND INSTITUTIONAL TRUST LANDS  
ADMINISTRATION  
Room 500  
675 E 500 S  
SALT LAKE CITY UT 84102-2818, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Thomas B. Faddies at the above address, by phone at 801-538-5150, by FAX at 801-355-0922, or by Internet E-mail at tomfaddies@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 02/14/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 04/01/2005

AUTHORIZED BY: Kevin S. Carter, Director

**R850. School and Institutional Trust Lands, Administration.**

**R850-25. Mineral Leases and Materials Permits.**

**R850-25-100. Classification of Mineral and Material Substances.**

Mineral leases and material permits shall be issued in accordance with the classifications described below. No mineral leases will be issued in conflict with this classification.

1. Mineral Classification.

(a) Metalliferous Minerals: shall include aluminum, antimony, arsenic, beryllium, bismuth, chromium, cadmium, cesium, columbium, cobalt, copper, fluor spar, gallium, gold, germanium, hafnium, iron, indium, lead, mercury, manganese, molybdenum, nickel, platinum, group metals, radium, silver, selenium, scandium, rare earth metals, rhenium, tantalum, tin, thorium, titanium, tungsten, thallium, tellurium, vanadium, uranium, ytterbium, zinc, and zirconium.

(b) Potash: shall include the chlorides, sulfates, carbonates, borates, silicates, and nitrates of potassium.

(c) Phosphate: shall mean any phosphate rock containing one or more phosphate minerals such as calcium phosphate and shall include all phosphatized limestones, sandstones, shales, and igneous rock.

(d) Clay Minerals: shall mean a fine grained, natural, earthy material composed primarily of hydrous aluminum silicates, plastic-like when wetted, rigid when dried en-masse, and vitrified when fired to a sufficiently high temperature, which shall include kaolin, bentonite, ball clay, fire clay, fuller earth, and clays and clay minerals or shales having unique characteristics giving the mineral deposit distinct and special value, such as carbonaceous shale, humic shale, and baked shale, where the primary value or use is other than building, construction or landscaping.

(e) Humic shale: shall refer to a dark colored shaley material containing humic acids or small particles of carbon, original organic tissue or other carbonaceous matter derived from plants and distributed throughout the whole mass. This classification does not include oil shale, bituminous-asphaltic sands, or coal.

(f) Limestone: shall include sedimentary rock having a predominant composition chiefly composed of calcium carbonate or calcium magnesium carbonate where the primary value or use is other than building, construction, or landscaping.

(g) Gemstone and Fossil: shall include precious, semi-precious or collectable mineral, and petrified material or stone having intrinsic value derived from its attractiveness or uncommon characteristics. This designation includes agate, amber, beryl, calcite, chert, coral, corundum, diamond, feldspar, garnet, geodes, jade, jasper, olivine, opal, pearl, quartz, septarian nodules, spinel, spodumene, topaz, tourmaline, turquoise, and zircon; and coquina, petrified wood, trilobites, and other common fossilized flora and invertebrate fauna.

(h) Gypsum: a natural hydrated calcium sulfate that includes alabaster, anhydrite, gypsite, satin spar, and selenite

(i) Gilsonite: a solid asphaltum found in place, in a vein, a lode, or rock.

(j) Volcanic Material: includes volcanic pyroclastic material such as ash, blocks, bombs, and tuff; glassy volcanic glass material including obsidian, perlite, pitchstone, pumice, scoria, and vitrophyre; and other uncommon volcanic materials where the primary value or use is other than building, construction, or landscaping.

(k) Industrial Sands: includes uncommon, naturally occurring sands having properties or containing minerals having special use in industrial processes or applications as determined by the director. This designation includes abrasive sands, filler sands, foundry sands, frac sands, glass sands, lime sands, magnetic sands, and silica sands.

(l) Mineral Salts: shall include all naturally occurring salts.

2. Material Classification.

(a) Material permits may be issued for common varieties of clay or stone having a primary value or use in building, construction, or landscaping, including basalt, common clay, conglomerate, flagstone, gabbro, granite, lava aggregate, limestone, marble, onyx, quartzite, rhyolite, rip-rap, sandstone, serpentine, shale, slate, soapstone, trapstone, travertine, whether crushed, sized, dimensioned, or unprocessed, and when the director deems it consistent with agency plans and trust responsibilities.

(b) No material permits will be issued in conflict with the Mineral Lease Classification under R850-25-100(1).

3. Non-Classified Minerals or Materials.

Mineral leases or material permits may also be issued for minerals or materials not listed under Subsections R850-25-100(1) and (2) at the discretion of the director. Alternatively, the director may issue a mineral lease or material permit for a non-classified mineral or material that is closely associated with a classified mineral or material so long as the mineral or material is specified as a leased or permitted substance in the mineral lease or material permit.

4. Close Association Minerals or Materials.

A mineral lease or material permit may include other minerals or materials found in close association with the expressly leased mineral or permitted material, when the substance cannot reasonably be mined separately or mined and separated.

5. Multiple Classified Minerals.

Mineral leases may also be issued to include a combination of classified minerals.

**R850-25-200. Mineral Lease Issuance.**

1. The director may issue mineral leases competitively, non-competitively or enter into joint ventures or other business

arrangements for the disposition of mineral deposits in accordance with the Act.

2. A mineral lease shall not be issued for a parcel less than a quarter-quarter section or surveyed lot unless approved by the director.

3. Mineral leases shall be limited to no more than 2,560 acres or four sections unless approved by the director.

4. A mineral lease may be terminated by the director in whole or part for lessee's failure to comply with any term or condition of the lease or applicable laws and rules.

#### **R850-25-300. Mineral Lease Provisions.**

##### 1. Rentals and Rental Credits.

(a) The director shall establish the rental rate for the primary lease term at the time the mineral lease is offered. The rental shall not be less than \$1 per acre per year.

(b) Rental payments shall be paid in advance each year on or before the mineral lease anniversary date, unless otherwise stated in the mineral lease.

(c) The minimum annual rental on any mineral lease shall not be less than \$500.

(d) The rental payment for a mineral lease year may be credited against production royalties only as they accrue for that lease year, unless otherwise provided for in the mineral lease.

(e) Any overpayment of rental occurring from the mineral lease applicant's incorrect listing of acreage of lands described in the application may, at the option of the director, be credited toward the applicant's rental account.

(f) The director shall accept rental payments made by any party, but the acceptance of rental shall not be deemed to be recognition of any interest of the payee in the lease.

##### 2. Royalty and Minimum Royalty.

(a) The director shall establish the production royalty rate(s) at the time the mineral lease is offered.

(b) The director shall establish the annual minimum royalty rate(s) at the time the mineral lease is offered.

##### 3. Primary Mineral Lease Term.

(a) The director shall establish the mineral lease primary term at the time the lease is offered.

(b) The primary lease term for any mineral lease shall not exceed ten (10) years unless approved as part of an OBA.

##### 4. Continuance of Mineral Lease After Expiration of Primary Term.

A mineral lease shall be continued after the primary term has expired so long as:

(a) the leased substance is being produced in paying quantities from the mineral lease or an approved mining unit; or

(b) the director determines that the lessee:

(i) is engaged in diligent operations, exploration, or development which is reasonably calculated to advance development or production of the leased substance; or

(ii) has made substantial financial investments for the direct purpose of advancing development or production of the leased substance; and

(iii) pays the annual minimum royalty set forth in the mineral lease.

##### 5. Readjustment of Mineral Lease.

All mineral leases shall contain a provision setting forth the agency's right to readjust the terms and provisions of the mineral lease on a periodic basis, and such readjustment shall be made in accordance with R850-24-1000.

##### 6. Other Lease Provisions.

The agency may require, in addition to the lease provisions required by these rules, any other provisions to be included in the mineral lease as it deems necessary.

#### **R850-25-400. Material Permit Issuance.**

1. The agency may issue material permits competitively, non-competitively, or enter into joint ventures or other business arrangements for the disposition of material deposits. In the event that a material permit is offered competitively and there are competing applications submitted, the agency will award the material permit based on the following criteria:

(a) amount of bonus bid;

(b) amount and rate of proposed materials extraction; and

(c) other criteria and assurances of performance as the agency shall require prior to bidding.

2. The agency may issue material permits "over-the-counter" in areas that have been designated by the director as open for such sales.

3. A material permit shall not be issued for a parcel less than one quarter-quarter section, or surveyed lot unless approved by the director.

4. Any material permit may be terminated by the agency in whole or part for permittee's failure to comply with any term or condition of the permit or applicable laws or rules.

#### **R850-25-500. Material Permit Provisions.**

##### 1. Rentals.

(a) The director shall establish the rental rate for a material permit, which shall not be less than \$10 per acre, or fractional part thereof, per annum.

(b) The minimum annual rental on material permits shall be determined periodically by the agency.

##### 2. Royalty and Minimum Royalty.

(a) The director shall establish the royalty rate based upon the agency's analysis of the local market for the commodity.

(b) The director will establish annual minimum royalty rates for material permits based on the type of material being removed. The agency may adjust the rates at any time in accordance with the terms of the permit.

##### 3. Material Permit Term.

(a) Material permits issued under these rules shall be for a term as specified in the terms and conditions of the material permit.

(b) All material permits shall expire at the end of five years, unless otherwise specified in the permit. Upon request of the permittee, the director may reissue the permit on the same terms or on readjusted terms. In no event shall a material permit continue for a period longer than five years without review and a determination by the director that reissuance on the same or readjusted terms is in the best interest of the beneficiaries.

##### 4. Other Permit Provisions.

The director may require, in addition to the above permit provisions, other provisions to be included in the material permit as it deems necessary.

#### **R850-25-600. Existing Mineral Lease and Material Permit Conversion.**

Existing mineral leases and material permits issued prior to the effective date of these rules and in good standing on such date shall continue for the term specified in the lease or permit and shall be subject to the terms and provisions contained in the lease or permit.

The agency may however, allow such lessees/permittees to convert such existing leases or permits to the new lease or permit, providing such conversion will not conflict with the valid existing rights of any other mineral lessee or material permittee or owner upon the same lands.

**R850-25-700. Mineral Lease and Material Permit Application Process.**

1. Applications for mineral leases or material permits, except in the case of competitive filing, are received for filing in the office of the agency during office hours. Except as provided, all the applications received by personal delivery over the counter, shall be immediately stamped with the exact date and time of filing. All applications presented for filing at the opening of the office for business on any business day shall be stamped received as of 8 a.m. on that day. All applications received in the first delivery of the U.S. Mail of each business day shall be stamped received as of 8 a.m. on that day. The time indicated on the time stamp is deemed the time of filing unless the agency determines that the application is materially deficient in any particular or particulars. If an application is determined to be deficient, it will be returned to the applicant.

2. Except in cases of competitive filing, if two or more applications for the same mineral lease or material permit contain identical bids and bear a time stamp showing the applications were filed at the same time, the agency will award the mineral lease or material permit by public drawing or oral auction.

3. Competitive Filing.

(a) The minimum acceptable bid for competitive filing of applications for a mineral lease or material permit shall be at least equal to the rental rate for the first year of the lease.

(b) Notices of the offering of lands for competitive filing will run for a period of not less than fifteen (15) consecutive days after the notice is posted in the agency's office.

(c) Where applicants wish to submit applications for competitive filing, such applications shall be submitted in separately sealed envelopes and marked for competitive filing.

4. Rejection.

If an application, or any part thereof, is rejected, any money tendered for rental on the rejected portion shall be refunded or credited.

5. Application Withdrawal.

(a) Should an applicant desire to withdraw his/her application, the applicant must submit a written request to the agency. If the request is received prior to the time the agency approves the application, all money tendered by the applicant, except the filing fee, shall be refunded. If the request is received after approval of the application, then, unless the applicant accepts the offered mineral lease or material permit, all money tendered is forfeited to the agency, unless otherwise approved by the director for good cause shown.

(b) Applicants desiring to withdraw an application which has been filed under the competitive filing rules above, must submit a written request to the agency. If the request is received before sealed bids for rental have been opened, all money tendered by the applicant, except the filing fee, shall be refunded. If the request is received after sealed bids for rental have been opened, and if the applicant is awarded the bid, then unless the applicant accepts the offered mineral lease or material permit, all money tendered shall be forfeited to the agency, unless otherwise approved by the director for good cause shown.

**R850-25-800. Operations Notification and Plan.**

1. At least 60 days prior to the commencement of any surface disturbance, drilling, mining or other operations, the lessee/permittee shall submit a plan of operations to the agency in accordance with the terms and conditions established by the agency, as set forth in R850-24-700. Under no circumstance shall the lessee/permittee commence operations without a plan of operation approved by the agency.

2. The agency shall require the lessee/permittee to meet agency reclamation requirements as set forth in R850-24-700.

**KEY: mineral classification, lease provisions, administrative procedures, permit terms**

April 1, 2005

53C-1-302(1)(a)(ii)

53C-2-201(1)(a)

53C-2-402(1)

▼ ————— ▼

**School and Institutional Trust Lands,  
Administration  
R850-26  
Coal Leases**

**NOTICE OF PROPOSED RULE**

(New Rule)

DAR FILE NO.: 27604

FILED: 12/23/2004, 14:50

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this new rule is to place all of the commodity-specific provisions in one location for greater clarity and to update the rule based on current agency practices that were not explicitly set out in Rule R850-20. (DAR NOTE: The proposed repeal of Rule R850-20 is under DAR No. 27611 in this issue.)

SUMMARY OF THE RULE OR CHANGE: A classification of mineral and material substances section, specific to this commodity, has been added to this rule. The minimum annual rental was increased to \$500 per year. The provisions for continuance after expiration of the primary term and for readjustments have been set forth more clearly, as well as the requirements for the operations plan and notification.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsections 53C-1-302(1)(a)(ii), 53C-2-201(1)(a), 53C-2-401(1)(d)(ii), 53C-2-402(1), and 53C-2-407(4)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: Because of the increase in minimum annual rental, it is anticipated that there will be a savings to the State budget of up to \$480 per year for leasehold of less than 500 acres. It is anticipated that some of the administrative costs of managing smaller leaseholds will be offset by this anticipated savings.

❖ LOCAL GOVERNMENTS: It is anticipated that there would be no additional cost or savings to local government with the implementation of this rule. The rule is a reformatting and reorganization of rules currently in force and no changes were made which will result in an increase or decrease in costs to local government.

❖ OTHER PERSONS: The anticipated cost to other persons with leaseholds smaller than 500 acres would be the difference between their current annual rental payment and the proposed minimum annual rental of \$500 per year. This increase does not affect a lessee with a leasehold or more than 500 acres.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Compliance costs for affected persons would be the increase in minimal annual rental for any lessee with a leasehold less than 500 acres. The cost to a lessee would be the difference between their current annual rental payment and the proposed minimum annual rental of \$500 per year.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule will have two impacts on business: 1) the annual minimum rental is being increased from \$20/year to \$500/year. The intention of this change is to motivate lessees to either put the leases into production, or to drop the leases so that others with the capabilities to produce can have a chance to lease the lands; and 2) lessees will have the obligation to develop a plan of operations prior to disturbing the surface during mining activities. This will allow the Agency to better regulate the mining activities and ensure that operations are conducted in a manner that will not leave unreclaimed sites which will cost the state substantial amounts to restore.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

SCHOOL AND INSTITUTIONAL TRUST LANDS  
ADMINISTRATION  
Room 500  
675 E 500 S  
SALT LAKE CITY UT 84102-2818, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
Thomas B. Faddies at the above address, by phone at 801-538-5150, by FAX at 801-355-0922, or by Internet E-mail at tomfaddies@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 02/14/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 04/01/2005

AUTHORIZED BY: Kevin S. Carter, Director

## **R850. School and Institutional Trust Lands, Administration.**

### **R850-26. Coal Leases.**

#### **R850-26-100. Definitions.**

In addition to those applicable definitions in R850-24-175, the following definitions also apply to this section:

1. Lease: a lease in a coal resource as defined in R850-26-150.
2. Lessee: a person or entity holding an interest in a coal lease.

#### **R850-26-150. Classification of Coal Resources.**

"Coal" shall include black or brownish-black solid fossil fuel that has been subjected to the natural processes of coalification and which falls within the classification of coal by rank: I Anthracite, II Bituminous, III Sub-Bituminous, and IV Lignite.

#### **R850-26-200. Coal Leasing of Lands Acquired in Public Law 105-335 Exchange.**

1. Acquired lands shall mean lands acquired by the agency pursuant to the Utah Schools and Lands Exchange Act of 1998, Public Law 105-335, 112 Stat. 3139 (1998)(the "Exchange Act").

2. Leasing of coal interests in the acquired lands shall be governed by applicable provisions of state law, the Exchange Act, that certain Memorandum of Understanding Between the Utah School and Institutional Trust Lands Administration, the United States Department of Agriculture, and the United States Department of the Interior dated January 5, 1999, as amended from time to time, and by those certain provisions of R850-24 and R850-26 not in conflict with this section.

3. The director shall have broad discretion to determine terms, conditions and procedures for leasing coal interests in the acquired lands by competitive filing, including without limitation:

- (a) the determination of rental rates;
- (b) lease forms and lease stipulations for particular tracts;
- (c) the amount of any required bid deposit;
- (d) the minimum acceptable bid for particular tracts;
- (e) terms of payment for bonus bids; and
- (f) bidding procedures generally.

4. The director may, but is not obligated to, disclose the minimum acceptable bid in advance of offering the lease by competitive filing.

5. In the event that the high bid in any competitive bid filing does not meet the minimum acceptable bid previously determined by the director, the director may, but is not obligated to, negotiate with the high bidder to obtain a negotiated bid that, in the discretion of the director, represents fair market value. Alternatively, the director may re-offer the lands for competitive filing, hold an oral auction of the lands pursuant to Subsection 53C-2-407(4), or withdraw the lands from leasing.

6. Nothing in this rule shall prevent the agency from leasing or otherwise disposing of coal interests in the acquired lands pursuant to Subsection 53C-2-401(1)(d)(ii), subject to compliance with applicable law.

#### **R850-26-300. Coal Lease Provisions.**

##### **1. Royalty and Minimum Royalty.**

(a) The director shall establish the production royalty rate, not to be less than 8%.

(b) The director shall establish the annual minimum royalty rate(s) at the time the lease is offered.

2. Size of Leaseable Tract.

A lease shall not be issued for a parcel less than a quarter-quarter section or surveyed lot unless approved by the director.

3. Primary Coal Lease Term.

The primary lease term for any lease may not exceed ten (10) years.

4. Continuance of Coal Lease After Expiration of Primary Term.

A lease shall be continued after the primary term has expired so long as:

(a) coal is being produced in paying quantities from the lease or an approved mining unit; or

(b) the agency determines that the lessee:

(i) is engaged in diligent operations, exploration, or development which is reasonably calculated to advance development or production of the coal resource; or

(ii) has made substantial financial investments for the direct purpose of advancing development or production of the coal resource; and

(iii) pays the annual minimum royalty set forth in the lease.

5. Readjustment of Coal Lease.

All leases shall contain a provision setting forth the agency's right to readjust the terms and provisions of the lease on a periodic basis, and such readjustment shall be made in accordance with R850-24-1000. A lease continued after expiration of its primary term shall be subject to such readjustment provision(s).

6. Other Lease Provisions.

(a) The agency may require, in addition to the lease provisions required by these rules, any other provisions to be included in the lease as it deems necessary.

**R850-26-400. Existing Coal Lease Conversion.**

Existing leases issued prior to the effective date of these rules and in good standing on such date shall continue for the term specified in the lease and shall be subject to the terms and provisions contained in the lease. The agency may, however, allow such lessees to convert such existing leases to the new lease, providing such conversion will not conflict with the valid existing rights of any other lessee or owner upon the same lands.

**R850-26-450. Coal Exploration Permit.**

The director may issue non-exclusive short-term exploration permits upon unleased trust lands for the purpose of conducting exploration drilling operations, according to the following terms:

1. Applications for a coal exploration permit shall include an application fee.

2. The application shall specify the location and number of exploratory drilling holes, and applicant shall pay a drilling fee as specified on the agency's fee schedule for each exploratory drilling hole approved by the agency.

3. Prior to commencing operations, the coal exploration permittee must obtain a coal exploration permit from UDOGM, and must provide 60 days' notice of intent to drill to the agency.

4. A bond for reclamation and drill hole plugging must be posted prior to the commencement of operations.

5. The coal exploration permittee must file a true and complete copy of all drilling logs and geological reports associated with the drilling project with the agency at the conclusion of drilling operations.

**R850-26-500. Operations Notification and Plan.**

1. At least 60 days prior to the commencement of any surface disturbance, drilling, mining or other operations, the lessee shall submit a plan of operations to the agency in accordance with the terms and conditions established by the agency, as set forth in R850-24-700. Under no circumstance shall the lessee/permittee commence operations without a plan of operation approved by the agency.

2. The agency shall require the lessee to meet agency reclamation requirements as set forth in R850-24-700.

**KEY: coal, lease provisions, administrative procedures, plan of operation**

**April 1, 2005**

**53C-1-302(1)(a)(ii)**

**53C-2-201(1)(a)**

**53C-2-401(1)(d)(ii)**

**53C-2-402(1)**

**53C-2-407(4)**



School and Institutional Trust Lands,  
Administration  
**R850-27**  
Geothermal Steam

**NOTICE OF PROPOSED RULE**

(New Rule)

DAR FILE NO.: 27601

FILED: 12/23/2004, 14:43

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this new rule is to provide commodity-specific rules in one location and give greater clarity to the provisions governing this commodity.

SUMMARY OF THE RULE OR CHANGE: This rule provides the commodity-specific provisions that were not explicitly set out in Rule R850-20. It defines the resources, lands available for lease of this resource, the application process, and the rentals, rental credits, royalty rate, terms and continuance, unitization, and shut-in well provisions. (DAR NOTE: The proposed repeal of Rule R850-20 is under DAR No. 27611 in this issue.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsections 53C-1-302(1)(a)(ii), 53C-2-201(1)(a), and 53C-2-402(1)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: It is not anticipated that there will be any additional cost or savings to the State budget with the implementation of this rule as its intent is to clarify current practices of the agency.

❖ LOCAL GOVERNMENTS: It is not anticipated that there would be any additional cost or savings to local government upon the implementation of this rule. The new rule is a reformatting

and reorganization of rules previously in place and will not result in an increase or decrease of costs to local government.  
 ❖ OTHER PERSONS: It is not anticipated that there will be any additional cost or savings to other persons upon the implementation of this rule as the intent is more for clarification purposes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: It is not anticipated that there will be any additional compliance costs for affected persons as the purpose of this rule is to clarify and simplify existing rules.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Generally, this proposed rule simply re-promulgates material in a manner specific to Geothermal leasing. However, one provision has been modified which will affect current and prospective lessees. The annual minimum rental is being increased from \$20/year to \$40/year. The intention of this change is to motivate lessees to either put the leases into production, or to drop the leases so that others with the capabilities to produce can have a chance to lease the lands.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

SCHOOL AND INSTITUTIONAL TRUST LANDS  
 ADMINISTRATION  
 Room 500  
 675 E 500 S  
 SALT LAKE CITY UT 84102-2818, or  
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Thomas B. Faddies at the above address, by phone at 801-538-5150, by FAX at 801-355-0922, or by Internet E-mail at tomfaddies@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 02/14/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 04/01/2005

AUTHORIZED BY: Kevin S. Carter, Director

**R850. School and Institutional Trust Lands, Administration.**

**R850-27. Geothermal Steam.**

**R850-27-100. Definitions.**

1. In addition to those applicable definitions in R850-24-175, the following definitions shall apply to this section:

- (a) Lease: a geothermal steam lease.
- (b) Lessee: a person or entity holding a record title interest in a geothermal steam lease.
- (c) Shut-In Geothermal Well: a geothermal well capable of producing in paying quantities, but which cannot be marketed at a reasonable price due to existing market conditions.

**R850-27-200. Geothermal Steam Lease Issuance.**

1. The agency shall issue leases competitively, non-competitively or enter into joint ventures or other business arrangements for the leasing of geothermal steam resources only on lands where the agency owns both the surface and mineral rights.

2. A lease shall not be issued for a parcel less than a quarter-quarter section or surveyed lot unless approved by the director.

3. Leases shall be limited to no more than 640 acres or one section unless approved by the director.

4. Any lease may be terminated by the agency in whole or part upon lessee's failure to comply with any term or condition of the lease or applicable laws and rules.

**R850-27-300. Geothermal Steam Lease Provisions.**

1. Rentals and Rental Credits.

(a) The director shall establish the rental rate, not less than \$1.00 per acre per year, at the time the lease is offered. The minimum annual rental on any lease shall not be less than \$40.

(b) Rental payments shall be paid in advance each year on or before the lease anniversary date, unless otherwise stated in the lease.

(c) The rental payment for a lease year shall be credited against production royalties only as they accrue for that lease year, unless otherwise provided for in the lease.

(d) Any overpayment of advance rental occurring from the lease applicant's incorrect listing of acreage of lands described in the application shall be credited toward the applicant's rental account.

(e) The agency may accept rental payments made by any party, provided however, that the acceptance of such payment(s) shall not be deemed to be recognition of any interest of the payee in the lease.

2. Royalty Rate.

(a) The director shall establish the production royalty rate, not to be less than 10%, unless otherwise established by the director, at the time the lease is offered.

3. Primary Geothermal Steam Lease Term.

(a) The director shall establish the lease primary term, not to exceed ten (10) years, at the time the lease is offered.

4. Continuance of a Geothermal Steam Lease After Expiration of Primary Term.

(a) A lease shall be continued after the primary term has expired so long as:

(i) the leased substance is being produced in paying quantities from the leased premises, from lands pooled, communitized, or unitized with the leased premises or from an approved drilling unit with respect to the leased premises; or

(b) the agency determines that the lessee:

(i) is engaged in operations, exploration, or development which are diligent and are reasonably calculated to advance development or production of the leased substance from the leased premises, from lands pooled, communitized, or unitized with the leased premises, or lands constituting an approved drilling unit with respect to the leased premises (diligent operations may include cessation of operations not in excess of 90 days in duration), and

(ii) pays the annual minimum royalty set forth in the lease.

5. Readjustment.

All geothermal leases shall contain a provision setting forth the agency's right to readjust the terms and provisions of the lease on a periodic basis, and such adjustment shall be made in accordance with R850-24-1000.

6. Unitization of Geothermal Leases.

(a) Lessees, upon prior written authorization of the director, may commit leased trust lands to unit, cooperative, or other plans of development with other lands.

(b) The director may, with the consent of the lessee, modify any term of a lease for lands that are committed to a unit, cooperative, or other plan of development.

(c) Production allocated to leased trust lands under the terms of a unit, cooperative, or other plan of development shall be considered produced from the leased lands whether or not the point of production is located on the leased trust lands.

(d) The term of all leases included in any cooperative or unit plan of geothermal steam development or operation in which the agency has joined, or shall hereafter join, shall be extended automatically for the term of the unit or cooperative agreement. Rentals on leases so extended shall be at the rate specified in the lease, subject to change in rates at the discretion of the director or as may be prescribed in the terms of the lease.

(e) Any lease eliminated from any cooperative or unit plan of development or operation, or any such lease which is in effect at the termination of a cooperative or unit plan of development or operation, unless relinquished, shall continue in effect for the fixed term of the lease, or for two years after its elimination from the plan or agreement or the termination thereof, whichever is longer, and so long thereafter as the leased substances are produced in paying quantities.

(f) Rentals under such leases shall continue at the rate specified in the lease.

7. Shut-In Geothermal Wells Considered to be Producing in Paying Quantities

(a) The director shall establish the minimum rental, not to be less than \$1.00 per acre per year nor more than twice the annual lease rental provided for in the lease, for a shut-in geothermal well.

(b) The director shall establish the minimum royalty, to be not less than 10% nor more than twice the annual lease rental provided for in the lease, for a shut-in geothermal well.

(c) The terms of the lease shall provide the basis upon which the minimum rental or minimum royalty is to be paid by the lessee for a shut-in geothermal well.

(d) The director may, at any time, require written verification from the lessee that a geothermal well qualifies as a shut-in geothermal well.

8. Other Lease Provisions.

The agency may require, in addition to the lease provisions required by these rules, any other provisions to be included in the lease as it deems necessary.

**R850-27-400. Existing Geothermal Steam Lease Conversion.**

Existing leases issued prior to the effective date of these rules and in good standing on such date shall continue for the term specified in the lease and shall be subject to the terms and provisions contained in the lease. The agency may, however, allow such lessees to convert such existing leases to the new lease, providing such conversion will not conflict with the valid existing rights of any other lessee or owner upon the same lands.

**R850-27-500. Geothermal Steam Lease Application Process.**

1. Applications for leases, except in the case of competitive bid filing, are received for filing in the office of the agency during office

hours. Except as provided, all the applications received by personal delivery over the counter, shall be immediately stamped with the exact date and time of filing. All applications presented for filing at the opening of the office for business on any business day shall be stamped received as of 8 a.m. on that day. All applications received in the first delivery of the U.S. Mail of each business day shall be stamped received as of 8 a.m. on that day. The time indicated on the time stamp is deemed the time of filing unless the agency determines that the application is materially deficient in any particular or particulars. If an application is determined to be deficient, it will be returned to the applicant.

2. Except in cases of competitive bid filing, if two or more applications for the same lease contain identical bids and bear a time stamp showing the applications were filed at the same time, the agency will award the lease by public drawing or oral bidding.

3. Competitive Bid Filing.

(a) The minimum acceptable bid for competitive bid filing of applications for a lease shall be at least equal to the rental rate for the first year of the lease.

(b) Notices of the offering of lands for competitive bid filing will run for a period of not less than fifteen (15) consecutive days after the notice is posted in the agency's office.

(c) Where applicants wish to submit applications for competitive bid, such applications shall be submitted in separately sealed envelopes and marked for competitive bid filing.

4. If an application or any part thereof is rejected, any money tendered for rental for the rejected portion shall be refunded or credited.

5. Application Withdrawal.

(a) Should an applicant desire to withdraw his application, the applicant must submit a written request to the agency. If the request is received prior to the time the agency approves the application, all money tendered by the applicant, except the filing fee, shall be refunded. If the request is received after approval of the application, then, unless the applicant accepts the offered lease, all money tendered is forfeited to the agency, unless otherwise approved by the director, for good cause shown.

(b) Applicants desiring to withdraw an application which has been filed under the competitive bid filing rules above, must submit a written request to the agency. If the request is received before sealed bids for rental have been opened, all money tendered by the applicant, except the filing fee, shall be refunded. If the request is received after sealed bids for rental have been opened, and if the applicant is awarded the bid, then unless the applicant accepts the offered lease, all money tendered shall be forfeited to the agency, unless otherwise approved by the director for good cause shown.

**R850-27-600. Operations Notification and Plan.**

1. At least 60 days prior to the commencement of any surface disturbance, drilling, or other operations, lessee shall submit a plan of operations to the agency in accordance with the terms and conditions required by the agency, as set forth in R850-24-700. Under no circumstance shall the lessee commence operations without a plan of operation approved by the agency.

2. The agency shall require the lessee to meet agency reclamation requirements as set forth in R850-24-700.

**KEY: geothermal steam, lease provisions, administrative procedures, plan of operations**

**April 1, 2005**

**53C-1-302(1)(a)(ii)**

**53C-2-201(1)(a)**

**53C-2-402(1)**



**School and Institutional Trust Lands,  
Administration  
R850-130  
Materials Permits**

**NOTICE OF PROPOSED RULE**

(Repeal)

DAR FILE No.: 27602

FILED: 12/23/2004, 14:47

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being repealed in order to be able to join portions of Rule R850-20 and Rule R850-130 into commodity-specific rules that give better clarity to provisions managing these resources. (DAR NOTE: The proposed repeal of Rule R850-20 is under DAR No. 27611 in this issue.)

SUMMARY OF THE RULE OR CHANGE: This rule is being repealed in its entirety so that provisions of this section can be combined with provisions found in R850-20 to form commodity-specific rules (Rules R850-23 and R850-25) that are easier to understand and follow. (DAR NOTE: The proposed new rule of R850-23 is under DAR No. 27609 and the proposed new rule of R850-25 is under DAR No. 27606 in this issue.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsections 53C-1-302(1)(a)(ii), 53C-2-201(1)(a), and 53C-4-101(1)

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: It is not anticipated that the repeal of this rule will bring about any cost or savings to the State budget. However, this rule is being replaced with commodity-specific rules, some of which contain increases in the amount of minimum annual rental charged by the agency. It is anticipated that those proposed increases will bring some savings to the State budget to help offset the administrative costs of managing smaller leaseholds and permitted areas.
- ❖ LOCAL GOVERNMENTS: It is not anticipated that the repeal of this rule will bring about any additional cost or savings to local government. This rule is being reformatted and reorganized into commodity-specific rules concurrent with this repeal, with no changes being made to how they affect local government.
- ❖ OTHER PERSONS: The repeal of this rule will not cause any additional cost or savings to other persons. However, the commodity-specific rules that replace this rule have the potential of increasing the amount paid in annual rental for

leaseholds or permitted areas of less than 500 acres, due to the increase in minimum annual rental to \$500 per year.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons associated with the repeal of this rule. However, under the replacement rules which are commodity-specific, there are potential increased costs for lessees and permittees with leaseholds or permitted areas smaller than 500 acres, due to the increase in minimum annual rental to \$500 per year.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Since the material in this rule will be re-promulgated in replacement rules concurrently with this action, it is not anticipated that there will be any fiscal impact from this action.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

**SCHOOL AND INSTITUTIONAL TRUST LANDS  
ADMINISTRATION  
Room 500  
675 E 500 S  
SALT LAKE CITY UT 84102-2818, or  
at the Division of Administrative Rules.**

DIRECT QUESTIONS REGARDING THIS RULE TO:

Thomas B. Faddies at the above address, by phone at 801-538-5150, by FAX at 801-355-0922, or by Internet E-mail at tomfaddies@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 02/14/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 04/01/2005

AUTHORIZED BY: Kevin S. Carter, Director

**R850. School and Institutional Trust Lands, Administration.  
~~R850-130. Materials Permits.  
R850-130-100. Authorities.~~**

~~— This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution, Sections 53C-1-302(1)(a)(ii) and 53C-4-101(1) which authorize the Director of the School and Institutional Trust Lands Administration to prescribe agency objectives, standards and conditions for the issuance of materials permits and for conveyances for common varieties of sand, gravel, cinders, and similar materials on Trust Lands Administration lands and also for common varieties of clay or stone having primary value or use in building, construction or landscaping, including basalt, common clay, conglomerate, flagstone, gabbro, granite, lava aggregate, marble, onyx, quartzite, rhyolite, rip rap, sandstone, serpentine, shale, slate, soapstone, trapstone, travertine, whether crushed, sized, dimensioned, or unprocessed providing, however, materials permits shall not include Limestone and no materials permit may be issued in conflict with the Mineral Lease Classifications under R850-20-200.~~

**R850-130-150. Planning.**

— Pursuant to Section 53C-2-201(1)(a), this category of activity carries the following planning obligations beyond existing rule-based analysis and approval processes:

- 1. To the extent required by the Memorandum of Understanding between the State Planning Coordinator and the School and Institutional Trust Lands Administration, submit the proposal for review by the Resource Development Coordinating Committee (RDCC) if the proposed action may have a significant impact upon natural or cultural resources of the state;
- 2. Evaluation of and response to comments received through the RDCC process; and
- 3. Evaluation of and response to any comments received through the solicitation process conducted pursuant to R850-130-400(4)(a) or R850-130-400(4)(b).

**R850-130-200. Materials Permits Issued on Trust Lands Administration Lands.**

— The agency may issue materials permits or may convey profits a prendre or similar interests on all Trust Lands Administration lands when the agency deems it consistent with agency land use plans and trust responsibilities.

— The agency may issue materials permits when the sale of such materials would be exempt from sales tax under Subsection 59-12-104(2) or 59-12-104(28).

— The agency may issue profits a prendre in all other instances using the procedures and provisions outlined in Sections R850-130-400, R850-130-500, R850-130-600, R850-130-1000, R850-130-1200, R850-130-1300 and R850-130-1500. The conveyance of a profit a prendre or similar interest in these materials will contain provisions to substantially conform to those found in Sections R850-130-300, R850-130-700, R850-130-800, and R850-130-900.

**R850-130-300. Rentals and Royalties.****1. Rentals**

— (a) Rental rates shall be \$10 per acre, or fractional part thereof, per annum.

— (b) The minimum annual rental on material permits shall be determined periodically by the agency pursuant to board policy.

**2. Royalty Rates and Provisions**

— (a) The agency shall charge full market value for all materials purchased under a materials permit. Market value shall be determined by the agency through analysis of the local market.

— (b) The agency, pursuant to board policy, may annually establish minimum royalty rates for materials permits based on the type of material being removed.

— (c) Royalty payments shall be remitted to the agency on a quarterly basis or on such other basis as may be required by the terms and conditions of the permit and shall be accompanied by an agency approved "Production and Settlement Transmittal Form".

**R850-130-400. Application Procedures.****1. Application Filing**

— Applications for materials permits may be submitted to any office of the agency during office hours pursuant to R850-3-

— (a) The director may approve applications for materials permits for common varieties of sand, gravel or cinders in accordance with the Bid Solicitation Process described in paragraph 2, below, subject to rule R850-130-1400, Over the Counter Sales.

— (b) The director may approve applications for materials permits for common varieties of clay or stone in the order of filing providing:

— i) the permit will not conflict with any existing mineral lease or materials permit on the same land;

— ii) the School and Institutional Trust Lands Administration has determined the market value of the commodity to be extracted under the permit and the applicant agrees to pay such value, in addition to annual rental.

— iii) the lands described within the permit application include not less than one quarter quarter section, or one surveyed lot, and all lie within the same township.

— iv) in the event two or more applications bear a time stamp showing that the applications were filed at the same time then a public drawing may be held to determine which applicant is awarded the permit, or all of the applications may be rejected and the director may solicit competing applications in accordance with the Bid Solicitation Process described in paragraph 2, below.

— (c) The director may at any time offer lands for the issuance of a materials permit for common varieties of clay or stone in accordance with the Bid Solicitation Process, described in paragraph 2, below.

**2. Bid Solicitation Processes**

— (a) In the absence of any valid materials permit application, or any existing mineral lease for the same commodity upon the same lands, the agency may offer for simultaneous bid material permits when exposing the site to the market could reasonably be expected to produce materials sales. A notice of lands available for simultaneous filing for materials permits shall be made in a manner to reasonably solicit simultaneous bid applications. Notices of simultaneous filing shall contain the procedure by which the agency shall award the permit.

— (b) Upon acceptance of any materials permit application for common varieties of sand, gravel, or cinders the agency shall solicit competing applications through publication at least once a week for two consecutive weeks in one or more newspapers of general circulation in the county in which the permit is offered. At least 30 days prior to bid opening, certified notification will be sent to permittees of record, adjacent permittees/lessees, and adjacent landowners. Notices will also be posted in the local governmental administrative building or the county courthouse. Notification and advertising shall include the legal description of the parcel and any other information which may create interest in the parcel. The successful applicant shall bear the cost of the advertising.

— (c) The agency shall allow all applicants at least 20 days from the date of mailing of notice, as evidenced by the certified mail posting receipt (Postal Service form 3800), within which to submit a sealed bid containing their proposal for the subject parcel. Competing bids will be evaluated using the criteria found in R850-30-500(2)(g), R850-80-500, and R850-90-200.

— (d) If no competing applications involving sale, lease or exchanges are received by the deadline published pursuant to R850-130-400(4)(b), then the agency shall award the materials permit based on the following criteria:

— i) amount of bonus bid.

— ii) amount and rate of proposed materials extraction.

— iii) other criteria and assurances of performances as the agency shall require by permit or advertise prior to bidding.

**R850-130-500. Permit Execution.**

The permit must be executed by the applicant and returned to the agency within 30 days from the date of applicant's receipt of the permit. Failure to execute and return the documents to the agency within the 30-day period may result in cancellation of the permit and the discharge of any obligation of the agency arising from the approval of the application.

**R850-130-600. Terms of Materials Permits.**

Materials permits issued under these rules shall normally be for a short duration, as specified in the terms and conditions of the permit, no longer than necessary to accomplish the extraction and removal of the materials subject to the sale, and accomplish any required reclamation work. In no event shall a materials permit continue for a period of longer than five years without readjustment in its terms and conditions, by the director, as may be determined to be in the best interest of the trust beneficiaries.

**R850-130-700. Materials Permit Provisions.**

Each materials permit shall contain provisions necessary to ensure responsible surface management including, but not limited to, the following provisions: The rights of the permittee; rights reserved to the permitter; the term of the permit; payment obligations; transfers of permit interest by permittee; permittee's responsibility for reclamation; terms and conditions of permit forfeiture; and protection of the Trust Lands Administration from liability from all actions of the permittee.

**R850-130-800. Bonding Provisions.**

1. Prior to the issuance of a materials permit, or for good cause shown at any time during the term of the materials permit, upon 30 days written notice, the applicant or permittee, as the case may be, may be required to post with the agency a bond in the form and amount as may be determined by the agency to assure compliance with all terms and conditions of the permit.

2. All bonds posted on materials permits may be used for payment of all monies, rentals, and royalties due to the agency, also for costs of reclamation and for compliance with all other terms and conditions of the permit, and rules pertaining to the permit. The bond shall be in effect even if the permittee has conveyed all or part of the permit interest to a sublessee, assignee, or subsequent operator until such time as the permittee fully satisfies the permit obligations, or until the bond is replaced with a new bond posted by the sublessee or assignee.

3. Bonds may be increased in reasonable amounts, at any time as the agency may decide, provided the agency first gives permittee 30 days written notice stating the increase and the reason(s) for such increase.

4. Bonds may be accepted in any of the following forms at the discretion of the agency:

(a) Surety bond with an approved corporate surety registered in Utah.

(b) Cash deposit. However, the Trust Lands Administration will not be responsible for any investment returns on cash deposits.

(c) Certificates of deposit in the name of "School and Institutional Trust Lands and permittee, c/o permittee's address", with an approved state or federally insured banking institution registered in Utah. Such certificate of deposit must have a maturity date no greater than 12 months, be automatically renewable, and be deposited with the agency, the permittee will be entitled to and

receive the interest payments. All certificates of deposit must be endorsed by the permittee prior to acceptance by the director.

(d) Other forms of surety as may be acceptable to the agency.

**R850-130-900. Insurance Requirements.**

1. Prior to the issuance of a materials permit, the applicant may be required to obtain insurance of a type and in an amount acceptable to the agency. Proof of insurance shall be in the form of a certificate of insurance containing sufficient information to satisfy the agency that insurance provisions of the permit have been complied with.

2. Such insurance, if required, shall be placed with an insurer with a financial rating assigned by the Best Insurance Guide of A:X or higher, unless this requirement is waived in writing by the agency.

3. The agency shall retain the right to review the coverage, form, and amount of the insurance required at any time and to require permittee to obtain insurance sufficient in coverage, form, and amount to provide adequate protection upon 30 days written notice, proof of such insurance to be provided pursuant to R850-130-900(1).

**R850-130-1000. Plans of Operation.**

1. Prior to the commencement of any activity authorized by a materials permit the permittee shall be required to submit, for the director's approval, a plan of operations which shall include the following:

(a) A map or plat showing

i) the location and sequence of areas from which material is to be excavated;

ii) the location of any processing or stationary equipment or improvements which will be placed on the premises;

iii) transportation and access routes across the premises and adjacent properties;

iv) the location of any fuel storage tanks; and

v) the location of stockpile areas.

(b) Elevation drawings of the premises before and after the excavation of materials.

(c) Reclamation plans acceptable to the director, upon review by the School and Institutional Trust Lands Administration.

(d) Copy of any required notification of the proposed operation to the Utah Division of Oil, Gas and Mining and all other government agencies.

(e) Copy of notification of the proposed operation to the owner of the surface estate, owners of the mineral estate, and to all other parties having any valid existing lease or permit upon the same lands.

2. Within 60 days of receiving such plan of operation the School and Institutional Trust Lands Administration shall review the plan and request any additional information necessary to complete the review. The permittee shall not commence any operations which may disturb the lands until the Trust Lands Administration has reviewed the plan of operation submitted by the permittee and has given its written approval to the permittee for the commencement of such operations.

3. Each permittee holding a current materials permit shall within 30 days of each annual anniversary date of the issuance of the permit, submit to the Trust Lands Administration a report of all activities under the permit for the previous year. Such report shall include a description of new excavations and surface disturbances;

the type and quantity of the materials produced and sold or stockpiled, a description of mined land reclamation work completed or in progress, and any other information requested by the Trust Lands Administration to reasonably monitor the permittee's operations under the permit.

**~~R850-130-1050. Conduct of Operations and Compliance with Rules.~~**

~~—All exploration, mining or other operations performed under any materials permit, shall be performed in a good and workmanlike manner to ensure the conservation of the materials deposits, all other deposits of common and uncommon varieties of mineral resources, and other natural resources upon the lands. Each permittee of a materials permit shall at all times take whatever measures are necessary to be in compliance with all applicable rules of any federal or state agency pursuant to the activities and operations of the permittee or operator upon the lands.~~

**~~R850-130-1100. Existing Lease and Permit Conversion.~~**

~~—Existing mineral leases, sand and gravel leases and materials permits issued prior to the effective date of these rules and in good standing on such date shall continue for the term specified therein and shall be subject to the conditions and provisions contained therein; provided, however, the agency may allow such lessees/permittees to convert such existing leases or permits to the new permit, providing such conversion will not conflict with the valid existing rights of any other mineral lessee or materials permittee or owner upon the same lands.~~

**~~R850-130-1200. Materials Permit Assignments.~~**

~~—1. A materials permit may be assigned to any person, firm, association, or corporation qualified under R850-3-200, provided that the assignments are approved by the agency; and no assignment is effective until approval is given. Any assignment made without such approval is void.~~

~~—2. An assignment shall take effect the day of the approval of the assignment. On the effective date of any assignment, the assignee is bound by the terms of the permit to the same extent as if such assignee were the original grantee, any conditions in the assignment to the contrary notwithstanding.~~

~~—3. An assignment must be a sufficient legal instrument, properly executed and acknowledged, and should clearly set forth the easement number, and land involved, and the name and address of the assignee.~~

~~—4. An assignment shall be executed according to agency procedures.~~

**~~R850-130-1300. Reclamation Requirements.~~**

~~—Following the completion of excavations, the agency shall require reclamation measures to stabilize and restore natural surface~~

~~conditions. Reclamation measures will generally consist of, but not necessarily be limited to, sloping and stabilization of highwalls, contouring of slopes at a ratio not greater than three feet horizontal for each one foot vertical, stabilization of access roads or the closure of access roads as determined by the agency, replacement of natural topsoils, revegetation using a seed mixture and rate of application as may be specified by the agency, removal of all trash and debris, and the prompt removal of all equipment, buildings, and structures owned by the permittee or permittee's agents.~~

**~~R850-130-1400. Over the Counter Sales.~~**

~~—Materials permits for common varieties of sand, gravel, or cinders may be issued on an "over the counter" basis in areas which have been designated by the director as open for such sales. The director may designate areas as open for such sales using any of the following criteria:~~

~~—1. An existing pit which has not been fully reclaimed. Reclamation requirements for all or portions of existing pits may be waived by the director for the purpose of "over the counter" sales when the pit meets the remaining criteria.~~

~~—2. Dry stream beds or similar sites where sand or gravel has accumulated, and the extraction of material will cause no degradation.~~

**~~R850-130-1500. Termination of Materials Permit.~~**

~~—Any materials permit issued by the Trust Lands Administration on trust land may be terminated in whole or in part for failure to comply with any term or condition of the permit or applicable laws or rules. Upon determination by the director that a materials permit is subject to termination pursuant to the terms of the permit or applicable laws or rules, the director shall issue an appropriate instrument terminating the permit.~~

**~~R850-130-1600. Collection of Sales Tax.~~**

~~—The agency shall require all permittees not exempt pursuant to Section 59-12-104 to remit sales taxes with the "Production and Settlement Transmittal Form" submitted pursuant to R850-130-300(2)(e).~~

**~~KEY: administrative procedures, materials handling, permits~~**  
**~~November 1, 2002~~**

**~~Notice of Continuation October 2, 2002~~**

**~~53C-1-302(1)(a)(ii)~~**

**~~53C-2-201(1)(a)~~**

**~~53C-4-101(1)~~**



**End of the Notices of Proposed Rules Section**

## NOTICES OF CHANGES IN PROPOSED RULES

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After an agency has published a PROPOSED RULE in the *Utah State Bulletin*, it may receive public comment that requires the PROPOSED RULE to be altered before it goes into effect. A CHANGE IN PROPOSED RULE allows an agency to respond to comments it receives.

As with a PROPOSED RULE, a CHANGE IN PROPOSED RULE is preceded by a RULE ANALYSIS. This analysis provides summary information about the CHANGE IN PROPOSED RULE including the name of a contact person, anticipated cost impact of the rule, and legal cross-references.

Following the RULE ANALYSIS, the text of the CHANGE IN PROPOSED RULE is usually printed. The text shows only those changes made since the PROPOSED RULE was published in an earlier edition of the *Utah State Bulletin*. Additions made to the rule appear underlined (e.g., example). Deletions made to the rule appear struck out with brackets surrounding them (e.g., [example]). A row of dots in the text (. . . . .) indicates that unaffected text was removed to conserve space. If a CHANGE IN PROPOSED RULE is too long to print, the Division of Administrative Rules will include only the RULE ANALYSIS. A copy of rules that are too long to print is available from the agency or from the Division of Administrative Rules.

While a CHANGE IN PROPOSED RULE does not have a formal comment period, there is a 30-day waiting period during which interested parties may submit comments. The 30-day waiting period for CHANGES IN PROPOSED RULES published in this issue of the *Utah State Bulletin* ends February 14, 2005. At its option, the agency may hold public hearings.

From the end of the waiting period through May 15, 2005, the agency may notify the Division of Administrative Rules that it wants to make the CHANGE IN PROPOSED RULE effective. When an agency submits a NOTICE OF EFFECTIVE DATE for a CHANGE IN PROPOSED RULE, the PROPOSED RULE as amended by the CHANGE IN PROPOSED RULE becomes the effective rule. The agency sets the effective date. The date may be no fewer than 30 days nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file another CHANGE IN PROPOSED RULE in response to additional comments received. If the Division of Administrative Rules does not receive a NOTICE OF EFFECTIVE DATE or another CHANGE IN PROPOSED RULE, the CHANGE IN PROPOSED RULE filing, along with its associated PROPOSED RULE, lapses and the agency must start the process over.

CHANGES IN PROPOSED RULES are governed by *Utah Code* Section 63-46a-6 (2001); and *Utah Administrative Code* Rule R15-2, and Sections R15-4-3, R15-4-5, R15-4-7, and R15-4-9.

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**The Changes in Proposed Rules Begin on the Following Page.**

Administrative Services, Child Welfare  
Parental Defense (Office of)  
**R19-1**  
Parental Defense Training Standards

**NOTICE OF CHANGE IN PROPOSED RULE**

DAR File No.: 27518  
Filed: 12/20/2004, 14:15

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This change in proposed rule incorporates additions and changes solicited from parental defenders and other interested parties during the comment period.

**SUMMARY OF THE RULE OR CHANGE:** This change provides the option of equivalent training and experience in place of core training course, and to integrate the training topics more specific to actual practice. (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed new rule that was published in the November 15, 2004, issue of the Utah State Bulletin, on page 9. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike-out indicates text that has been deleted. You must view the change in proposed rule and the proposed new rule together to understand all of the changes that will be enforceable should the agency make this rule effective.)

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 63A-11-107

**ANTICIPATED COST OR SAVINGS TO:**

- ❖ **THE STATE BUDGET:** Training for about 50 attorneys will cost about \$10,000 in lodging, meals, consultation, and speakers. This cost would be largely assumed by the Office of Child Welfare Parental Defense.
- ❖ **LOCAL GOVERNMENTS:** Local government is generally not required by contract to pay for travel costs for parental defenders.
- ❖ **OTHER PERSONS:** Because this involves training that will be provided by the Office for contracted parental defenders, no compliance costs are foreseen for private parental defenders.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Because this involves training that will be provided by the Office, no compliance costs are foreseen.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** This rule will have negligible, if any, fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ADMINISTRATIVE SERVICES  
CHILD WELFARE PARENTAL DEFENSE (OFFICE OF)

Room 5110 STATE OFFICE BLDG  
450 N MAIN ST  
SALT LAKE CITY 84114, or  
at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

Pam Blackham at the above address, by phone at 801-538-3458, by FAX at 801-538-3644, or by Internet E-mail at pblackham@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 02/14/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 02/15/2005

AUTHORIZED BY: Alicia Davis, Director

**R19. Administrative Services, Child Welfare Parental Defense (Office of).****R19-1. Parental Defense Counsel Training.****R19-1-1. Authority.**

(1) This rule is made under authority of Subsection 63A-11-202(3).

**R19-1-2. Purpose.**

(1) In accordance with Section 63A-11-202, these training standards are provided for parental defenders acting pursuant to a county contract or a contract with this office.

**R19-1-3. Definitions.**

As per Section 63A-11-102, the following terms are used for the purpose of this rule.

(1) "Child welfare case" means a proceeding under Title 78, Chapter 3a, Juvenile Courts, Parts 3 or 4.

~~[(2) "Child welfare teams" means district teams consisting generally of a judge, an assistant attorney general, a representative of the Division of Child and Family Services, a guardian ad litem and one or more court representatives.]~~

[(3)2] "Office" means the Office of Child Welfare Parental Defense.

[(4)3] "Parental Defender" means a defense attorney who has contracted with the office or local county to provide parental defense services pursuant to Section 63A-11-102 et seq.

**R19-1-4. Core Training.**

(1) Parental defenders shall complete the core training course provided by the Office of Child Welfare Parental Defense prior to receiving an appointment by a juvenile court judge unless the Office determines that the defender has equivalent training and experience. The core training shall consist of at least eight hours of training which may include, but is not limited to the following topics:

- (a) Relevant state law, federal law, case law and rules in family preservation and child welfare;
- (b) The "Practice Model" of the Division of Children and Family Services;

- (c) Attorney roles and responsibilities, including ethical considerations
- (d) Dynamics of abuse and neglect; and
- (e) Preserving and protecting parents' rights in juvenile court.

**R19-1-5. Continuing Training.**

(1) Each calendar year thereafter, a contracted parental defender shall complete at least eight hours of continuing legal education courses. The continuing legal education can consist of, but is not limited to, the core training topics listed in Section 4 above or any of these additional topics:

- ~~[(a) Family dynamics;]~~ (a) Trial and appellate advocacy;
- (b) Substance abuse, domestic violence and mental health issues;
- (c) Grief and attachment;
- (d) Custody and parent-time;
- (e) Resources and services;
- ~~[(f) District-specific child welfare issues requiring resolution as identified by the district's lead judge or child welfare team; and]~~ (f) Child development and communications;
- ~~[(g) Trial and appellate advocacy]~~ (g) Medical issues in child welfare; and
- (h) District-specific child welfare issues requiring resolution as identified by the district's judges or other actors in the child welfare system.

**KEY: child welfare, parental defense**  
~~2004~~2005  
 63A-11-107



**Insurance, Administration**  
**R590-203**  
**Health Grievance Review Process and**  
**Disability Claims**

**NOTICE OF CHANGE IN PROPOSED RULE**

DAR File No.: 27504  
 Filed: 12/29/2004, 09:15

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The changes made to this rule are a result of suggested changes made during the last comment period which ended 12/15/2004.

SUMMARY OF THE RULE OR CHANGE: The changes to Section R590-203-3 are to correct the outline format. The changes to Section R590-203-4 are for clarification and to correct grammar. Subsection R590-203-4(1) clarifies that a "consumer representative" is an employee of the insurer. Subsection R590-203-4(2) clarifies that "Health Insurance" is a contract. Subsection R590-203-6(1) adds the words "of medical necessity" to the end of the sentence. Subsection R590-203-6(3)(e) adds words, "on both parties," at end of the first sentence. (DAR NOTE: This change in proposed rule

has been filed to make additional changes to a proposed amendment that was published in the November 15, 2004, issue of the Utah State Bulletin, on page 47. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike-out indicates text that has been deleted. You must view the change in proposed rule and the proposed amendment together to understand all of the changes that will be enforceable should the agency make this rule effective.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 31A-2-201, 31A-2-203, 31A-4-116, and 31A-22-629

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: The changes to this rule will not affect the state's budget since the changes do not require licensees to file anything with the department nor require the department to take action that will add to or reduce their workload.
- ❖ LOCAL GOVERNMENTS: This rule does not affect local governments. It only deals with the relationship between health insurers licensed to do business in Utah, the Insurance Department, and health insurance consumers.
- ❖ OTHER PERSONS: The changes to this rule are intended to correct grammar and clarify intent. None of the changes will create a fiscal impact on the insurance industry or their consumers.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The changes to this rule are intended to correct grammar and clarify intent. None of the changes will create a fiscal impact on the insurance industry or their consumers.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no impact on Utah businesses as a result of these changes.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

INSURANCE  
 ADMINISTRATION  
 Room 3110 STATE OFFICE BLDG  
 450 N MAIN ST  
 SALT LAKE CITY UT 84114-1201, or  
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 Jilene Whitby at the above address, by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at [jwhitby@utah.gov](mailto:jwhitby@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 02/14/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 02/18/2005

AUTHORIZED BY: Jilene Whitby, Information Specialist

**R590. Insurance, Administration.****R590-203. Health Grievance Review Process and Disability Claims.****R590-203-1. Authority.**

This rule is specifically authorized by 31A-22-629(4) and 31A-4-116, which requires the commissioner to establish minimum standards for grievance review procedures. The rule is also promulgated pursuant to Subsections 31A-2-201(1) and 31A-2-201(3)(a) in which the commissioner is empowered to administer and enforce this title and to make rules to implement the provisions of this title. The authority to examine insurer records, files, and documentation is provided by 31A-2-203.

**R590-203-2. Purpose.**

The purpose of this rule is to ensure that insurer's grievance review procedures for individual and group health insurance and income replacement plans comply with the Department of Labor, Pension and Welfare Benefits Administration Rules and Regulations for Administration and Enforcement: Claims Procedure, 29 CFR 2560.503-1, and Utah Code Sections 31A-4-116 and 31A-22-629.

**R590-203-3. Applicability and Scope.**

- (1) This rule applies to individual and group:
  - (a) policies issued or renewed and effective on or after January 1, 2001;
  - (b) income replacement policies;
    - (i) including short-term, and
    - (ii) long-term disability policies;
  - (c) health insurance; and
  - (d) health maintenance organization contracts.
- (2) Long Term Care and Medicare supplement policies are not considered health insurance for the purpose of this rule.

**R590-203-4. Definitions.**

For the purposes of this rule:

- (1) "Consumer Representative" may be an employee of the insurer who is a consumer of a health insurance or an income replacement policy, as long as the employee is not;
  - (a) the individual who ~~had~~ made the adverse determination, or
  - (b) a subordinate to the individual who made the adverse determination.
- (2) "Health Insurance" means a contract of:
  - (a) health care insurance as defined in 31A-1-301; and
  - (b) health maintenance organization as defined in 31A-8-101.
- (3) "Medical Necessity" means:
  - (a) health care services or products that a prudent health care professional would provide to a patient for the purpose of preventing, diagnosing or treating an illness, injury, disease or ~~it~~ its symptoms in a manner that is:
    - (i) in accordance with generally accepted standards of medical practice in the United States;
    - (ii) clinically appropriate in terms of type, frequency, extent, site, and duration;
    - (iii) not primarily for the convenience of the patient, physician, or other health care provider; and
    - (iv) covered under the contract; and
  - (b) that when a medical question-of-fact exists medical necessity shall include the most appropriate available supply or level of service for the individual in question, considering potential benefits and harms to the individual, and known to be effective.

(i) For interventions not yet in widespread use, the effectiveness shall be based on scientific evidence.

(ii) For established interventions, the effectiveness shall be based on:

- (A) scientific evidence;
  - (B) professional standards; and
  - (C) expert opinion.
- (4)(a) "Scientific evidence" means:

(i) scientific studies published in or accepted for publication by medical journals that meet nationally recognized requirements for scientific manuscripts and that submit most of their published articles for review by experts who are not part of the editorial staff; or

(ii) findings, studies or research conducted by or under the auspices of federal government agencies and nationally recognized federal research institutes.

(b) Scientific evidence shall not include published peer-reviewed literature sponsored to a significant extent by a pharmaceutical manufacturing company or medical device manufacturer or a single study without other supportable studies.

**R590-203-5. Adverse Benefit Determination.**

(1) An insurer's adverse benefit determination review procedure shall be compliant with the adverse benefit determination review requirements set forth in the Department of Labor, Pension and Welfare Benefits Administration Rules and Regulations for Administration and Enforcement: Claims Procedure, 29 CFR 2560.503-1, effective January 20, 2001. This document is incorporated by reference and available for inspection at the Insurance Department and the Department of Administrative Rules.

(2) The provision of this rule and federal regulation applies to claims filed under individual or group plans on or after the first day of the first plan year beginning on or after July 1, 2002, but no later than January 1, 2003.

(3) An insurer's adverse benefit determination appeal board or body shall include at least one consumer representative that shall be present at every meeting.

**R590-203-6. Independent and Expedited Adverse Benefit Determination Reviews for Health Insurance.**

(1) An insurer shall provide an independent review procedure as a voluntary option for the resolution of adverse benefit determinations of medical necessity.

(2) An independent review procedure shall be conducted by an independent review organization, person, or entity other than the insurer, the plan, the plan's fiduciary, the employer, or any employee or agent of any of the foregoing, that do not have any material professional, familial, or financial conflict of interest with the health plan, any officer, director, or management employee of the health plan, the enrollee, the enrollee's health care provider, the provider's medical group or independent practice association, the health care facility where service would be provided and the developer or manufacturer of the service being provided.

(3) Independent review organizations shall be designated by the insurer, and the independent review organization chosen shall not own or control, be a subsidiary of, or in any way be owned or controlled by, or exercise control with a health insurance plan, a national, state, or local trade association of health insurance plans, and a national, state, or local trade association of health care providers.

(4) The submission to an independent review procedure is purely voluntary and left to the discretion of the claimant.

(5) An insurer's voluntary independent review procedure shall:

(a) waive any right to assert that a claimant has failed to exhaust administrative remedies because the claimant did not elect to submit a dispute of medical necessity to a voluntary level of appeal provided by the plan;

(b) agree that any statute of limitations or other defense based on timeliness is tolled during the time a voluntary appeal is pending;

(c) allow a claimant to submit a dispute of medical necessity to a voluntary level of appeal only after exhaustion of the appeals permitted under 29 CFR Subsection 2560.503-1(c)(2), of the Department of Labor, Pension and Welfare Benefits Administration Rules and Regulations for the Administration and Enforcement: Claims Procedure;

(d) upon request from any claimant, provide sufficient information relating to the voluntary level of appeal to enable the claimant to make an informed decision about whether to submit a dispute of medical necessity to the voluntary level of appeal. This information shall contain a statement that the decision to use a voluntary level of appeal will not effect the claimant's rights to any other benefits under the plan and information about the applicable rules, the ~~claimant's~~ claimant's right to representation, and the process for selecting the decision maker.

(e) An independent review conducted in compliance with Section 31A-22-629, and this rule, can be binding on both parties. A claimant's submission to a binding independent review is purely voluntary and appropriate disclosure and notification must be given as required by the Department of Labor, Pension and Welfare Benefits Administration Rules and Regulations for Administration and Enforcement: Claims Procedure, 29 CFR 2560.503-1.

(6) Standards for voluntary independent review:

(a) The insurer's internal adverse benefit determination process must be exhausted unless the insurer and insured mutually agree to waive the internal process.

(b) Any adverse benefit determination of medical necessity may be the subject of an independent review.

(c) The claimant has 180 calendar days from the date of the final internal review decision to request an independent review.

(d) An insurer shall use the same minimum standards and times of notification requirement for an independent review that are used for internal levels of review, as set forth in 29 CFR Subsection 2560.503-1(h)(3), (i)(2) and (j).

(7) An insurer shall provide an expedited review process for cases involving urgent care claims.

(8) A request for an expedited review of an adverse benefit determination of medical necessity may be submitted either orally or in writing. If the request is made orally an insurer shall, within 24 hours, send written confirmation to the claimant acknowledging the receipt of the request for an expedited review.

(9) An expedited review requires:

(a) all necessary information, including the plan's original benefit determination, be transmitted between the plan and the claimant by telephone, facsimile, or other available similarly expeditious method;

(b) an insurer to notify the claimant of the benefit review determination, as soon as possible, taking into account the medical

urgency, but not later than 72 hours after receipt of the claimant's request for review of an adverse benefit determination; and

(c) an insurer to use the same minimum standard for timing and notification as set forth in 29 CFR Subsection 2560.503-1(h), 503-1(i)(2)(i), and 503-1(j).

**R590-203-7. Income Replacement Adverse Benefit Determination Review.**

(1) For initial level of review, an insurer will resolve a disability claim within 45 days of receipt of the claim for benefits.

(2) For reasons beyond the control of the plan administrator or the insurer, there may be a 30-day extension granted.

(3) If after the first 30-day extension, the plan administrator or the insurer should determine that they still cannot determine benefits and it is still out of their control, a final 30-day extension will be allowed.

(4) Upon request, relevant information free-of-charge, must be provided to the insured on any adverse benefit determination.

**R590-203-8. File and Record Documentation.**

An insurer shall make available upon request by the commissioner, or the commissioner's duly appointed designees, all adverse benefit determination review files and related documentation. An insurer shall keep these records for the current calendar year plus three years.

**R590-203-9. Compliance.**

Insurers are to be compliant with the provisions of this rule and the Department of Labor, Pension and Welfare Benefits Administration Rules and Regulations for Administration and Enforcement: Claims Procedure, 29 CFR 2560.503-1, by July 1, 2002.

**R590-203-10. Relationship to Federal Rules.**

If an insurer complies with the requirements of the Department of Labor, Pension and Welfare Benefits Administration Rules and Regulations for Administration and Enforcement: Claims Procedure, 29 CFR 2560.503-1, then this rule is not applicable to employer plans, except for Sections 4, 5, 6, 7, and 8 of this rule. All individual plans will remain subject to this rule in its entirety.

**R590-203-11. Severability.**

If a provision or clause of this rule or its application to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of these provisions shall not be affected.

**KEY: insurance**

**~~2004~~2005**

**31A-2-201**

**31A-2-203**

**31A-4-116**

**31A-22-629**



**End of the Notices of Changes in Proposed Rules Section**

# FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

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Within five years of an administrative rule's original enactment or last five-year review, the responsible agency is required to review the rule. This review is designed to remove obsolete rules from the *Utah Administrative Code*.

Upon reviewing a rule, an agency may: repeal the rule by filing a PROPOSED RULE; continue the rule as it is by filing a NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (NOTICE); or amend the rule by filing a PROPOSED RULE and by filing a NOTICE. By filing a NOTICE, the agency indicates that the rule is still necessary.

NOTICES are not followed by the rule text. The rule text that is being continued may be found in the most recent edition of the *Utah Administrative Code*. The rule text may also be inspected at the agency or the Division of Administrative Rules. NOTICES are effective when filed. NOTICES are governed by *Utah Code* Section 63-46a-9 (1998).

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## Administrative Services, Facilities Construction and Management **R23-2** Procurement of Architect-Engineer Services

### FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 27608  
FILED: 12/23/2004, 14:58

### NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 63-56-14(2) provides for the State Building Board to adopt rules governing the procurement of architect-engineer services by the Division of Facilities Construction and Management (DFCM). Subsection 63A-5-103(1)(e) authorizes the Building Board to make rules necessary to discharge its duties and those of DFCM.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received however, a review of the procurement process governed by this rule was conducted with the participation of representatives of the architect and engineer professions along with legislators, Building Board members, and DFCM staff. This resulted in some recommendations for changes in the process used. Amendments are currently filed for this rule to reflect the recommendations of this review.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is necessary to provide additional detail for the application of the State Procurement Code in the procurement of architect-engineer services by DFCM. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ADMINISTRATIVE SERVICES  
FACILITIES CONSTRUCTION AND MANAGEMENT  
Room 4110 STATE OFFICE BLDG  
450 N MAIN ST  
SALT LAKE CITY UT 84114-1201, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Kenneth Nye at the above address, by phone at 801-538-3284, by FAX at 801-538-3267, or by Internet E-mail at knye@utah.gov

AUTHORIZED BY: Keith Stepan, Director

EFFECTIVE: 12/23/2004



## Insurance, Administration **R590-197** Treatment of Guaranty Association Assessments as Qualified Assets

### FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 27618  
FILED: 12/29/2004, 08:40

### NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 31A-17-201(2) allows the commissioner to designate by rule those assets authorized by him in determining the financial condition of an insurer. Section R590-197-3 of the rule allows, under certain conditions, that guaranty association assessments paid by an insurer in any state to be listed as a qualified asset.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The department has received no written comments regarding this rule in the past five years.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Insurers are still subject to guarantee fund assessments and states are still allowing premium tax offsets to insurers for payment of guarantee fund assessments. As long as insurers are afforded tax offsets or other benefits for payment of guarantee fund assessments, it is appropriate to allow them as an asset, which is what this rule does. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

INSURANCE  
ADMINISTRATION  
Room 3110 STATE OFFICE BLDG  
450 N MAIN ST  
SALT LAKE CITY UT 84114-1201, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Jilene Whitby at the above address, by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at [jwhitby@utah.gov](mailto:jwhitby@utah.gov)

AUTHORIZED BY: Jilene Whitby, Information Specialist

EFFECTIVE: 12/29/2004

## Insurance, Administration

### **R590-198**

#### Valuation of Life Insurance Policies Rule

##### **FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE No.: 27619  
FILED: 12/29/2004, 08:53

##### **NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Sections 31A-17-402 and 31A-17-512 authorize the commissioner to adopt a method for computing reserves for life insurance policies. Sections R590-198-5, R590-198-6, and R590-198-7 of the rule specifically set standards for the determination of reserves for different types of life policies.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The department has received no written comments regarding this rule in the past five years.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule ensures that life insurance companies will maintain an adequate level of reserves to pay future life insurance claims. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

INSURANCE  
ADMINISTRATION  
Room 3110 STATE OFFICE BLDG  
450 N MAIN ST  
SALT LAKE CITY UT 84114-1201, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Jilene Whitby at the above address, by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at [jwhitby@utah.gov](mailto:jwhitby@utah.gov)

AUTHORIZED BY: Jilene Whitby, Information Specialist

EFFECTIVE: 12/29/2004

## Labor Commission, Industrial Accidents

### **R612-9**

#### Designation of the Initial Assessment of Noncompliance Penalties as an Informal Proceeding

##### **FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE No.: 27595  
FILED: 12/17/2004, 10:25

##### **NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 34A-1-104 of the Labor Commission Act, in conjunction with Section 63-46b-4 of the Administrative Procedures Act, authorizes the commission to designate various adjudicative proceedings as either "formal" or "informal." Section 34A-2-211 of the Workers' Compensation Act establishes an adjudicative procedure for assessing penalties against employers who fail to provide workers' compensation insurance coverage. Rule R612-9 designates the initial level of such proceedings as "informal," and any subsequent proceedings as "formal."

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received during and since the last five-year review of this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Because the penalty assessment procedures of Section 34A-2-211 remain in effect, it remains necessary to designate the various components of that procedure as either "informal" or "formal" under the Administrative Procedures Act; and therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

LABOR COMMISSION  
INDUSTRIAL ACCIDENTS  
HEBER M WELLS BLDG  
160 E 300 S  
SALT LAKE CITY UT 84111-2316, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Joyce Sewell at the above address, by phone at 801-530-6988, by FAX at 801-530-6804, or by Internet E-mail at [jsewell@utah.gov](mailto:jsewell@utah.gov)

AUTHORIZED BY: R Lee Ellertson, Commissioner

EFFECTIVE: 12/17/2004



School and Institutional Trust Lands,  
Administration  
**R850-10**  
Expedited Rulemaking

**FIVE YEAR NOTICE OF REVIEW AND  
STATEMENT OF CONTINUATION**

DAR FILE NO.: 27598  
FILED: 12/22/2004, 10:25

**NOTICE OF REVIEW AND  
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 53C-1-201(3)(c) specifically authorizes an "expedited" rulemaking process, outside of the traditional rulemaking process, or even the emergency rulemaking process established under Title 63. Although the statutory authorization for expedited rules instructs the director of the agency to establish a procedure to enact expedited rules, it was deemed prudent to codify this procedure in rule. Rule R850-10 establishes a procedure for promulgating expedited rules.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received concerning this rule since the last five-year review which was submitted in January, 2000.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R850-10 provides a structured, consistent approach to carry out the direction of the Legislature as provided by statute in Subsection 53C-1-201(3)(c). The need to enact expedited rules continues to exist, and is expected to be necessary into the future as business needs change due to changing market places and the need to react quickly to time-sensitive business opportunities; therefore the rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

SCHOOL AND INSTITUTIONAL TRUST LANDS  
ADMINISTRATION  
Room 500  
675 E 500 S  
SALT LAKE CITY UT 84102-2818, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Kevin S. Carter at the above address, by phone at 801-538-5101, by FAX at 801-538-5118, or by Internet E-mail at [kevincarter@utah.gov](mailto:kevincarter@utah.gov)

AUTHORIZED BY: Kevin S. Carter, Director

EFFECTIVE: 12/22/2004



## NOTICES OF RULE EFFECTIVE DATES

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These are the effective dates of PROPOSED RULES or CHANGES IN PROPOSED RULES published in earlier editions of the *Utah State Bulletin*. These effective dates are at least 31 days and not more than 120 days after the date the following rules were published.

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### Abbreviations

AMD = Amendment  
CPR = Change in Proposed Rule  
NEW = New Rule  
R&R = Repeal and Reenact  
REP = Repeal

### Administrative Services

#### Administration

No. 27495 (AMD): R13-2. Access to Records.  
Published: November 1, 2004  
Effective: December 21, 2004

#### Fleet Operations

No. 27510 (AMD): R27-3. Vehicle Use Standards.  
Published: November 15, 2004  
Effective: December 20, 2004

### Commerce

#### Occupational and Professional Licensing

No. 27301 (AMD): R156-31b. Nurse Practice Act Rules.  
Published: August 1, 2004  
Effective: December 21, 2004

No. 27301 (CPR): R156-31b. Nurse Practice Act Rules.  
Published: November 15, 2004  
Effective: December 21, 2004

### Health

#### Health Care Financing, Coverage and Reimbursement Policy

No. 27516 (NEW): R414-35. Mental Health Services for Children in State Custody.  
Published: November 15, 2004  
Effective: December 16, 2004

No. 27515 (AMD): R414-310. Medicaid Primary Care Network Demonstration Waiver.  
Published: November 15, 2004  
Effective: December 16, 2004

### Insurance

#### Administration

No. 27506 (NEW): R590-232. Authorization for a Health Maintenance Organization to Provide Services as Third Party Administrator of Health Care Benefits.  
Published: November 15, 2004  
Effective: December 29, 2004

### Tax Commission

#### Auditing

No. 27485 (AMD): R865-19S-119. Certain Transactions Involving Food and Lodging Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.  
Published: November 1, 2004  
Effective: December 21, 2004

#### Property Tax

No. 27513 (AMD): R884-24P-53. 2004 Valuation Guides for Valuation of Land Subject to the Farmland Assessment Act Pursuant to Utah Code Ann. Section 59-2-515.  
Published: November 15, 2004  
Effective: December 21, 2004

**End of the Notices of Rule Effective Dates Section**

## 2005 RULES INDEX BY AGENCY (CODE NUMBER) AND BY KEYWORD (SUBJECT)

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The *Rules Index* is a cumulative index that reflects all effective changes to Utah's administrative rules. The current *Index* lists changes made effective from January 1, 2005, including notices of effective date received through December 30, 2004, the effective dates of which are no later than January 15, 2005. The *Rules Index* is published in the *Utah State Bulletin* and in the annual *Index of Changes*. Nonsubstantive changes, while not published in the *Bulletin*, do become part of the *Utah Administrative Code (Code)* and are included in this *Index*, as well as 120-Day (Emergency) rules that do not become part of the *Code*. The rules are indexed by Agency (Code Number) and Keyword (Subject).

DAR NOTE: The index may contain inaccurate page number references. Also the index is incomplete in the sense that index entries for Changes in Proposed Rules (CPRs) are not preceded by entries for their parent Proposed Rules. These difficulties with the index are related to a new software package used by the Division to create the Bulletin and related publications; we hope to have them resolved as soon as possible. Bulletin issue information and effective date information presented in the index are, to the best of our knowledge, complete and accurate. If you have any questions regarding the index and the information it contains, please contact Nancy Lancaster (801 538-3218), Mike Broschinsky (801 538-3003), or Kenneth A. Hansen (801 538-3777).

A copy of the *Rules Index* is available for public inspection at the Division of Administrative Rules (4120 State Office Building, Salt Lake City, UT), or may be viewed online at the Division's web site (<http://www.rules.utah.gov/>).

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### RULES INDEX - BY AGENCY (CODE NUMBER)

#### ABBREVIATIONS

AMD = Amendment	NSC = Nonsubstantive rule change
CPR = Change in proposed rule	REP = Repeal
EMR = Emergency rule (120 day)	R&R = Repeal and reenact
NEW = New rule	5YR = Five-Year Review
EXD = Expired	

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<b>Administrative Services</b>					
<u>Fleet Operations</u>					
R27-1-2	Definitions	27546	AMD	01/10/2005	2004-23/3
R27-4	Vehicle Replacement and Expansion of State Fleet	27543	AMD	01/10/2005	2004-23/5
R27-6	Fuel Dispensing Program	27544	AMD	01/10/2005	2004-23/7
<b>Agriculture and Food</b>					
<u>Plant Industry</u>					
R68-3	Utah Fertilizer Act Governing Fertilizers and Soil Amendments.	27645	5YR	01/07/2005	Not Printed
<b>Commerce</b>					
<u>Occupational and Professional Licensing</u>					
R156-56	Utah Uniform Building Standard Act Rules	27489	AMD	01/01/2005	2004-21/6

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
R156-56-704	Statewide Amendments to the IBC	27490	AMD	01/01/2005	2004-21/11
R156-61-502	Unprofessional Conduct	27538	AMD	01/04/2005	2004-23/40
R156-71-202	Naturopathic Physician Formulary	27533	AMD	01/04/2005	2004-23/41
<b>Education</b>					
<u>Administration</u>					
R277-473	Testing Procedures	27547	AMD	01/04/2005	2004-23/43
<b>Environmental Quality</b>					
<u>Air Quality</u>					
R307-110-12	Section IX, Control Measures for Area and Point Sources, Part C, Carbon Monoxide	27343	CPR	01/04/2005	2004-23/53
<b>Health</b>					
<u>Health Care Financing, Coverage and Reimbursement Policy</u>					
R414-7D	Intermediate Care Facility for the Mentally Retarded Transition Project	27505	NEW	01/03/2005	2004-22/15
<b>Human Services</b>					
<u>Recovery Services</u>					
R527-10	Disclosure of Information to the Office of Recovery Services	27640	5YR	01/06/2005	Not Printed
R527-40	Retained Support	27642	5YR	01/06/2005	Not Printed
R527-210	Guidelines for Setting Child Support Awards	27534	REP	01/04/2005	2004-23/49
R527-475	State Tax Refund Intercept	27641	5YR	01/06/2005	Not Printed
<b>Insurance</b>					
<u>Administration</u>					
R590-196	Bail Bond Surety Fee Standards, Collateral Standards, and Disclosure Form	27644	5YR	01/07/2005	Not Printed
<b>Natural Resources</b>					
<u>Wildlife Resources</u>					
R657-13	Taking Fish and Crayfish	27432	CPR	01/03/2005	2004-22/66
R657-13	Taking Fish and Crayfish	27432	AMD	01/03/2005	2004-20/33
<b>Public Service Commission</b>					
<u>Administration</u>					
R746-360-9	One-Time Distributions from the Fund	27302	CPR	01/04/2005	2004-23/54
<b>Workforce Services</b>					
<u>Employment Development</u>					
R986-500-501	Authority for Adoption Assistance (AA) and Other Applicable Rules	27491	AMD	01/01/2005	2004-21/31

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## RULES INDEX - BY KEYWORD (SUBJECT)

### ABBREVIATIONS

AMD = Amendment	NSC = Nonsubstantive rule change
CPR = Change in proposed rule	REP = Repeal
EMR = Emergency rule (120 day)	R&R = Repeal and reenact
NEW = New rule	5YR = Five-Year Review
EXD = Expired	

KEYWORD AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<b><u>environmental protection</u></b>					
Environmental Quality, Air Quality	27343	R307-110-12	CPR	01/04/2005	2004-23/53
<b><u>adoption assistance</u></b>					
Workforce Services, Employment Development	27491	R986-500-501	AMD	01/01/2005	2004-21/31
<b><u>building codes</u></b>					
Commerce, Occupational and Professional Licensing	27489	R156-56	AMD	01/01/2005	2004-21/6
	27490	R156-56-704	AMD	01/01/2005	2004-21/11
<b><u>building inspection</u></b>					
Commerce, Occupational and Professional Licensing	27489	R156-56	AMD	01/01/2005	2004-21/6
	27490	R156-56-704	AMD	01/01/2005	2004-21/11
<b><u>child support</u></b>					
Human Services, Recovery Services	27640	R527-10	5YR	01/06/2005	Not Printed
	27642	R527-40	5YR	01/06/2005	Not Printed
	27534	R527-210	REP	01/04/2005	2004-23/49
	27641	R527-475	5YR	01/06/2005	Not Printed
<b><u>contractors</u></b>					
Commerce, Occupational and Professional Licensing	27489	R156-56	AMD	01/01/2005	2004-21/6
	27490	R156-56-704	AMD	01/01/2005	2004-21/11
<b><u>definitions</u></b>					
Administrative Services, Fleet Operations	27546	R27-1-2	AMD	01/10/2005	2004-23/3
<b><u>educational testing</u></b>					
Education, Administration	27547	R277-473	AMD	01/04/2005	2004-23/43
<b><u>fertilizers</u></b>					
Agriculture and Food, Plant Industry	27645	R68-3	5YR	01/07/2005	Not Printed
<b><u>financial information</u></b>					
Human Services, Recovery Services	27640	R527-10	5YR	01/06/2005	Not Printed
<b><u>fish</u></b>					
Natural Resources, Wildlife Resources	27432	R657-13	AMD	01/03/2005	2004-20/33
	27432	R657-13	CPR	01/03/2005	2004-22/66

<u>KEYWORD</u> <u>AGENCY</u>	<u>FILE</u> <u>NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE</u> <u>DATE</u>	<u>BULLETIN</u> <u>ISSUE/PAGE</u>
<b><u>fishing</u></b>					
Natural Resources, Wildlife Resources	27432	R657-13	AMD	01/03/2005	2004-20/33
	27432	R657-13	CPR	01/03/2005	2004-22/66
<b><u>fleet expansion</u></b>					
Administrative Services, Fleet Operations	27543	R27-4	AMD	01/10/2005	2004-23/5
<b><u>fuel dispensing</u></b>					
Administrative Services, Fleet Operations	27544	R27-6	AMD	01/10/2005	2004-23/7
<b><u>health insurance</u></b>					
Human Services, Recovery Services	27640	R527-10	5YR	01/06/2005	Not Printed
<b><u>insurance</u></b>					
Insurance, Administration	27644	R590-196	5YR	01/07/2005	Not Printed
<b><u>licensing</u></b>					
Commerce, Occupational and Professional Licensing	27489	R156-56	AMD	01/01/2005	2004-21/6
	27490	R156-56-704	AMD	01/01/2005	2004-21/11
	27538	R156-61-502	AMD	01/04/2005	2004-23/40
	27533	R156-71-202	AMD	01/04/2005	2004-23/41
<b><u>Medicaid</u></b>					
Health, Health Care Financing, Coverage and Reimbursement Policy	27505	R414-7D	NEW	01/03/2005	2004-22/15
<b><u>naturopathic physician</u></b>					
Commerce, Occupational and Professional Licensing	27533	R156-71-202	AMD	01/04/2005	2004-23/41
<b><u>naturopaths</u></b>					
Commerce, Occupational and Professional Licensing	27533	R156-71-202	AMD	01/04/2005	2004-23/41
<b><u>ozone</u></b>					
Environmental Quality, Air Quality	27343	R307-110-12	CPR	01/04/2005	2004-23/53
<b><u>particulate matter</u></b>					
Environmental Quality, Air Quality	27343	R307-110-12	CPR	01/04/2005	2004-23/53
<b><u>psychologists</u></b>					
Commerce, Occupational and Professional Licensing	27538	R156-61-502	AMD	01/04/2005	2004-23/40
<b><u>public utilities</u></b>					
Public Service Commission, Administration	27302	R746-360-9	CPR	01/04/2005	2004-23/54
<b><u>small business assistance program</u></b>					
Environmental Quality, Air Quality	27343	R307-110-12	CPR	01/04/2005	2004-23/53
<b><u>telecommunications</u></b>					
Public Service Commission, Administration	27302	R746-360-9	CPR	01/04/2005	2004-23/54
<b><u>universal service</u></b>					
Public Service Commission, Administration	27302	R746-360-9	CPR	01/04/2005	2004-23/54
<b><u>vehicle replacement</u></b>					
Administrative Services, Fleet Operations	27543	R27-4	AMD	01/10/2005	2004-23/5

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<u>KEYWORD</u> <u>AGENCY</u>	<u>FILE</u> <u>NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE</u> <u>DATE</u>	<u>BULLETIN</u> <u>ISSUE/PAGE</u>
<b><u>wildlife</u></b>					
Natural Resources, Wildlife Resources	27432	R657-13	AMD	01/03/2005	2004-20/33
	27432	R657-13	CPR	01/03/2005	2004-22/66
<b><u>wildlife law</u></b>					
Natural Resources, Wildlife Resources	27432	R657-13	AMD	01/03/2005	2004-20/33
	27432	R657-13	CPR	01/03/2005	2004-22/66

# COMPLETE 2004 RULES INDEX BY AGENCY (CODE NUMBER) AND BY KEYWORD (SUBJECT)

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The *Rules Index* is a cumulative index that reflects all effective changes to Utah's administrative rules. The 2004 *Index* lists changes made effective from January 2, 2004 through January 1, 2005. The *Rules Index* is published in the *Utah State Bulletin* and in the annual *Index of Changes*. Nonsubstantive changes, while not published in the *Bulletin*, do become part of the *Utah Administrative Code (Code)* and are included in this *Index*, as well as 120-Day (Emergency) rules that do not become part of the *Code*. The rules are indexed by Agency (Code Number) and Keyword (Subject).

DAR NOTE: The index may contain inaccurate page number references. Bulletin issue information and effective date information presented in the index are, to the best of our knowledge, complete and accurate. If you have any questions regarding the index and the information it contains, please contact Nancy Lancaster (801 538-3218), Mike Broschinsky (801 538-3003), or Kenneth A. Hansen (801 538-3777).

A copy of the *Rules Index* is available for public inspection at the Division of Administrative Rules (4120 State Office Building, Salt Lake City, UT), or may be viewed online at the Division's web site (<http://www.rules.utah.gov/>).

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## RULES INDEX - BY AGENCY (CODE NUMBER)

Rules made effective January 2, 2004, through January 1, 2005

### ABBREVIATIONS

<p>AMD = Amendment CPR = Change in Proposed Rule EMR = Emergency rule (120-day) NEW = New rule EXD = Expired</p>	<p>NSC = Nonsubstantive rule change REP = Repeal R&amp;R = Repeal and reenact 5YR = Five-Year Review EXT = Extension</p>
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CODE REFERENCE ISSUE/PAGE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN
<b>Administrative Services</b>					
<u>Administration</u>					
R13-2	Access to Records	27495	AMD	12/21/2004	2004-21/5
<u>Facilities Construction and Management</u>					
R23-2	Procurement of Architect-Engineer Services	27608	5YR	12/23/2004	2005-2/168
R23-3	Planning and Programming for Capital Projects	27313	5YR	7/28/2004	2004-16/33
R23-29	Across the Board Delegation	26991	5YR	3/10/2004	2004-7/35
<u>Finance</u>					
R25-7	Travel-Related Reimbursements for State Employees	27120	AMD	7/1/2004	2004-10/4
R25-7-6	Reimbursements for Meals	27164	AMD	7/2/2004	2004-11/4
<u>Fleet Operations</u>					
R27-3	Vehicle Use Standards	27510	AMD	12/20/2004	2004-22/10
<u>Fleet Operations, Surplus Property</u>					
R28-1	State Surplus Property Disposal	27440	AMD	11/17/2004	2004-20/7
R28-3	Utah State Agency for Surplus Property Adjudicative Proceedings	26843	AMD	2/12/2004	2004-1/4

Records Committee

R35-1	State Records Committee Appeal Hearing Procedures	26973	EXT	7/2/2004 see 5YR DAR No. 27277	Not Printed
R35-1	State Records Committee Appeal Hearing Procedures	27277	5YR	7/2/2004	2004-15/62
R35-2	Declining Appeal Hearings	27278	5YR	7/2/2004	2004-15/62
R35-3	Prehearing Conferences	27279	5YR	7/2/2004	2004-15/63
R35-4	Compliance with State Records Committee Decisions and Orders	27280	5YR	7/2/2004	2004-15/63
R35-5	Subpoenas Issued by the Records Committee	27281	5YR	7/2/2004	2004-15/64
R35-6	Expedited Hearings	27282	5YR	7/2/2004	2004-15/64

**Agriculture and Food**Animal Industry

R58-20	Domesticated Elk Hunting Parks	26990	5YR	3/5/2004	2004-7/35
R58-20-5	Facilities	26989	AMD	5/4/2004	2004-7/3
R58-21	Trichomoniasis	26891	AMD	3/4/2004	2004-3/4

Plant Industry

R68-6	Utah Nursery Act	27320	AMD	9/15/2004	2004-16/5
R68-6-5	Standards for Nursery Stock	27397	NSC	12/1/2004	Not Printed
R68-20-1	Authority	26949	AMD	4/1/2004	2004-5/2
R68-20-1	Authority	26987	NSC	5/1/2004	Not Printed

Regulatory Services

R70-310	Grade A Pasteurized Milk	27149	AMD	7/2/2004	2004-11/6
R70-310	Grade A Pasteurized Milk	27286	5YR	7/9/2004	2004-15/65
R70-330	Raw Milk for Retail	27069	AMD	6/2/2004	2004-9/4
R70-440	Egg Products Inspection	27425	NEW	11/4/2004	2004-19/4
R70-540	Food Establishment Registration	27453	NEW	11/16/2004	2004-20/9
R70-630	Water Vending Machine	27291	5YR	7/13/2004	2004-15/65
R70-630	Water Vending Machine	27290	AMD	9/8/2004	2004-15/4
R70-630	Water Vending Machine	27380	NSC	11/1/2004	Not Printed
R70-630	Water Vending Machine	27438	NSC	12/1/2004	Not Printed
R70-960	Weights and Measures Fee Registration	27424	NEW	11/2/2004	2004-19/4

**Alcoholic Beverage Control**Administration

R81-1-3	General Policies	27025	AMD	6/1/2004	2004-8/4
R81-1-8	Consent Calendar Procedures	27027	AMD	6/1/2004	2004-8/5
R81-1-21	Beer Advertising in Event Venues	27028	AMD	6/1/2004	2004-8/6
R81-1-21	Beer Advertising in Event Venues	27105	NSC	6/1/2004	Not Printed
R81-1-21	Beer Advertising in Event Venues	27145	NSC	6/1/2004	Not Printed
R81-1-22	Diplomatic Embassy Shipments and Purchases	27029	AMD	6/1/2004	2004-8/8
R81-1-23	Sales Restrictions on Products of Limited Availability	27030	AMD	6/1/2004	2004-8/10
R81-2-1	Special Orders of Liquor by Public	27031	AMD	6/1/2004	2004-8/11
R81-2-2	Liquor Returns, Refunds and Exchanges	27032	AMD	6/1/2004	2004-8/12
R81-2-7	Minors on Premises	27033	AMD	6/1/2004	2004-8/14
R81-2-8	Accepting Checks as Payment for Liquor	27034	AMD	6/1/2004	2004-8/14
R81-2-9	Accepting Credit Cards as Payment for Liquor	27035	AMD	6/1/2004	2004-8/16
R81-2-9	Accepting Credit Cards as Payment for Liquor	27201	AMD	8/2/2004	2004-12/3
R81-2-10	State Store Hours	27036	AMD	6/1/2004	2004-8/17
R81-2-11	Industry Members in State Stores	27037	AMD	6/1/2004	2004-8/18
R81-3-5	Special Orders of Liquor by Public	27038	AMD	6/1/2004	2004-8/19
R81-3-6	Liquor Returns, Refunds and Exchanges	27039	AMD	6/1/2004	2004-8/20
R81-3-14	Type 5 Package Agencies	27040	AMD	6/1/2004	2004-8/22
R81-3-16	Minors on Premises	27041	AMD	6/1/2004	2004-8/23
R81-3-17	Consignment Inventory Package Agencies	27042	AMD	6/1/2004	2004-8/24
R81-3-18	Type 4 Package Agency Room Service - Mini-Bottle/187 ml Wine Sales	27043	AMD	6/1/2004	2004-8/25
R81-3-19	Credit Cards	27044	AMD	6/1/2004	2004-8/26
R81-3-19	Credit Cards	27104	NSC	6/1/2004	Not Printed
R81-3-19	Credit Cards	27146	NSC	6/1/2004	Not Printed
R81-4D-13	On-Premise Banquet License Room Service - Mini-Bottle/187 ml Wine Sales	27045	AMD	6/1/2004	2004-8/27
R81-6-6	Religious Wine Permits	27046	AMD	6/1/2004	2004-8/29

COMPLETE 2004 RULES INDEX

R81-8-2	Out of State Business	27047	AMD	6/1/2004	2004-8/30
R81-8-3	Winery Tasting Facilities	27048	AMD	6/1/2004	2004-8/31
<b>Commerce Administration</b>					
R151-33	Pete Suazo Utah Athletic Commission Act Rule	27312	AMD	9/15/2004	2004-16/8
<b>Consumer Protection</b>					
R152-11	Utah Consumer Sales Practices Act Rules	26945	AMD	5/20/2004	2004-5/3
R152-21	Credit Services Organizations Act Rules	27238	5YR	6/15/2004	2004-13/66
R152-34	Postsecondary Proprietary School Act Rules	26905	AMD	5/20/2004	2004-4/2
<b>Occupational and Professional Licensing</b>					
R156-1	General Rules of the Division of Occupational and Professional Licensing	27358	EMR	8/24/2004	2004-18/79
R156-1	General Rules of the Division of Occupational and Professional Licensing	27377	AMD	10/18/2004	2004-18/4
R156-1-106	Division - Duties, Functions, and Responsibilities	26805	AMD	1/20/2004	2003-24/4
R156-1-302	Consideration of Good Moral Character, Unlawful Conduct, Unprofessional Conduct, or Other Mental or Physical Condition	27103	NSC	6/1/2004	Not Printed
R156-5a	Podiatric Physician Licensing Act Rules	26917	5YR	1/27/2004	2004-4/74
R156-17a-612	Operating Standards - Pharmaceutical Wholesaler/Distributor and Pharmaceutical Manufacturer located in Utah	26754	AMD	2/19/2004 see CPR in 01/15/2004 Bulletin	2003-22/11
R156-17a-612	Operating Standards - Pharmaceutical Wholesaler/Distributor and Pharmaceutical Manufacturer located in Utah	26754	CPR	2/19/2004	2004-2/10
R156-26a-303b	Renewal and Reinstatement Requirements - Continuing Professional Education (CPE)	26786	AMD	1/6/2004	2003-23/7
R156-26a-303b	Renewal and Reinstatement Requirements - Continuing Professional Education (CPE)	27019	AMD	5/24/2004	2004-8/32
R156-31b	Nurse Practice Act Rules	27301	AMD	12/21/2004 see CPR in 11/15/2004 Bulletin	2004-15/6
R156-31b	Nurse Practice Act Rules	27301	CPR	12/21/2004	2004-22/57
R156-31c	Nurse Licensure Compact Rules	27567	5YR	11/29/2004	2004-24/66
R156-37c	Utah Controlled Substance Precursor Act Rules	26916	5YR	1/27/2004	2004-4/74
R156-38	Residence Lien Restriction and Lien Recovery Fund Rules	26834	AMD	2/3/2004	2004-1/5
R156-38	Residence Lien Restriction and Lien Recovery Fund Rules	27020	AMD	7/26/2004 see CPR in 06/15/2004 Bulletin	2004-8/39
R156-38	Residence Lien Restriction and Lien Recovery Fund Rules	27020	CPR	7/26/2004	2004-12/73
R156-39a	Alternative Dispute Resolution Providers Certification Act Rules	26915	5YR	1/27/2004	2004-4/75
R156-42a	Occupational Therapy Practice Act Rules	27400	5YR	9/2/2004	2004-19/48
R156-44a	Nurse Midwife Practice Act Rules	27224	5YR	6/10/2004	2004-13/66
R156-46a	Hearing Instrument Specialist Licensing Act Rules	27247	5YR	6/24/2004	2004-14/56
R156-46b	Division Utah Administrative Procedures Act Rules	27401	AMD	11/2/2004	2004-19/6
R156-47b	Massage Therapy Practice Act Rules	26937	AMD	6/7/2004	2004-5/5
R156-54-302b	Examination Requirements - Radiology Practical Technician	26580	AMD	1/20/2004 see CPR in 12/15/2003 Bulletin	2003-18/4
R156-54-302b	Examination Requirements - Radiology Practical Technician	26580	CPR	1/20/2004	2003-24/70
R156-55a-301	License Classifications - Scope of Practice	27441	NSC	10/1/2004	Not Printed
R156-55b	Electricians Licensing Rules	27112	AMD	6/15/2004	2004-10/6
R156-55b-302c	Qualifications for Licensure - Work Experience	27394	NSC	12/1/2004	Not Printed
R156-55d-302f	Qualifications for Licensure - Good Moral Character - Disqualifying Convictions	27188	AMD	10/5/2004 see CPR in 09/01/2004 Bulletin	2004-12/4
R156-55d-302f	Qualifications for Licensure - Good Moral Character - Disqualifying Convictions	27188	CPR	10/5/2004	2004-17/47

R156-56	Utah Uniform Building Standard Act Rules	27101	AMD	8/17/2004 see CPR in 07/15/2004 Bulletin	2004-9/5
R156-56	Utah Uniform Building Standard Act Rules	27101	CPR	8/17/2004	2004-14/37
R156-56	Utah Uniform Building Standard Act Rules	27489	AMD	1/1/2005	2004-21/6
R156-56-704	Statewide Amendments to the IBC	27474	NSC	12/1/2004	Not Printed
R156-56-704	Statewide Amendments to the IBC	27490	AMD	1/1/2005	2004-21/11
R156-60	Mental Health Professional Practice Act Rules	27501	5YR	10/21/2004	2004-22/68
R156-60a	Social Worker Licensing Act Rules	27285	AMD	9/1/2004	2004-15/17
R156-60a	Social Worker Licensing Act Rules	27502	5YR	10/21/2004	2004-22/68
R156-60b	Marriage and Family Therapist Licensing Act Rules	27503	5YR	10/21/2004	2004-22/69
R156-61	Psychologist Licensing Act Rules	27225	5YR	6/10/2004	2004-13/67
R156-63	Security Personnel Licensing Act Rules	26888	AMD	3/4/2004	2004-3/5
R156-68	Utah Osteopathic Medical Practice Act Rules	26956	AMD	4/15/2004	2004-6/2
R156-71-202	Naturopathic Physician Formulary	26998	AMD	5/4/2004	2004-7/3
R156-71-202	Naturopathic Physician Formulary	27140	NSC	6/1/2004	Not Printed
R156-73	Chiropractic Physician Practice Act Rules	27355	AMD	10/18/2004	2004-18/13
R156-74	Certified Shorthand Reporters Licensing Act Rules	26927	5YR	2/2/2004	2004-4/75
R156-76-102	Definitions	26777	AMD	1/20/2004	2003-23/14
R156-78A-9	Action upon Request - Scheduling Procedures - Continuances	27328	NSC	9/1/2004	Not Printed
<b>Real Estate</b>					
R162-3	License Status Change	27026	AMD	5/20/2004	2004-8/44
R162-6-2	Standards of Practice	26944	AMD	4/21/2004	2004-5/6
R162-6-2	Standards of Practice	27009	NSC	4/21/2004	Not Printed
R162-7-3	Investigation and Enforcement	26835	AMD	2/18/2004	2004-1/9
R162-8	Prelicensing Education	27338	AMD	10/21/2004	2004-17/3
R162-9	Continuing Education	27335	AMD	10/21/2004	2004-17/4
R162-101-2	Definitions	27132	AMD	9/10/2004	2004-10/10
R162-103	Appraisal Education Requirements	27241	AMD	10/7/2004	2004-14/2
R162-103	Appraisal Education Requirements	27349	AMD	11/24/2004	2004-17/7
R162-104	Experience Requirement	27350	AMD	11/24/2004	2004-17/9
R162-105	Scope of Authority	26890	5YR	1/13/2004	2004-3/42
R162-105	Scope of Authority	27131	AMD	9/10/2004	2004-10/11
R162-106-8	Draft Reports	27098	AMD	7/28/2004	2004-9/11
R162-107	Unprofessional Conduct	27128	AMD	9/10/2004	2004-10/13
R162-201	Residential Mortgage Definitions	27129	NEW	6/29/2004	2004-10/15
R162-201	Residential Mortgage Definitions	27395	AMD	11/3/2004	2004-19/8
R162-202	Residential Mortgage Renewal Period	26837	AMD	2/3/2004	2004-1/10
R162-202	Initial Application	27130	AMD	6/29/2004	2004-10/15
R162-202	Initial Application	27399	AMD	11/3/2004	2004-19/8
R162-203	Changes to Residential Mortgage Registration Statement	26909	AMD	4/12/2004	2004-4/7
R162-203	Changes to Residential Mortgage Licensure Statement	27396	AMD	11/3/2004	2004-19/11
R162-204	Residential Mortgage Record Keeping Requirements	26908	AMD	4/12/2004	2004-4/8
R162-205	Residential Mortgage Unprofessional Conduct	26907	AMD	4/12/2004	2004-4/9
R162-205	Residential Mortgage Unprofessional Conduct	27352	AMD	10/7/2004	2004-17/11
R162-206	Licensing Examination	26840	NEW	2/3/2004	2004-1/12
R162-207	License Renewal	26839	NEW	2/3/2004	2004-1/13
R162-207	License Renewal	27402	AMD	11/3/2004	2004-19/12
R162-208	Continuing Education	26836	NEW	2/3/2004	2004-1/14
R162-208	Continuing Education	27403	AMD	11/3/2004	2004-19/15
R162-209	Administrative Proceedings	26906	AMD	4/12/2004	2004-4/10
R162-209	Administrative Proceedings	27404	AMD	11/3/2004	2004-19/18
R162-210	Certification of Prelicensing Education Providers	27405	NEW	11/3/2004	2004-19/20
<b>Securities</b>					
R164-11-2	Hearings for Certain Exchanges of Securities	26481	AMD	1/5/2004 see CPR in 12/01/2003 Bulletin	2003-15/17
R164-11-2	Hearings for Certain Exchanges of Securities	26481	CPR	1/5/2004	2003-23/83
<b>Community and Economic Development</b>					
<b>Community Development, History</b>					
R212-4	Archaeological Permits	27359	AMD	11/23/2004	2004-18/15

COMPLETE 2004 RULES INDEX

Community Development, Library

R223-2-2 Definitions 27125 AMD 9/8/2004 2004-10/17

**Corrections**

Administration

R251-101 Corrections Advisory Council Bylaws 26769 REP 3/24/2004 2003-23/15  
 R251-113 Distribution of Reimbursement from the Inmate Costs Reimbursement Program 27416 AMD 11/9/2004 2004-19/28

**Crime Victim Reparations**

Administration

R270-1 Award and Reparations Standards 27157 AMD 7/2/2004 2004-11/7  
 R270-3 ADA Complaint Procedure 27460 5YR 9/30/2004 2004-20/75  
 R270-4 Government Records Access and Management Act 27461 5YR 9/30/2004 2004-20/75

**Education**

Administration

R277-102 Adjudicative Proceedings 26958 5YR 2/26/2004 2004-6/58  
 R277-105 Recognizing Constitutional Freedoms in the Schools 27214 5YR 6/1/2004 2004-12/79  
 R277-402 Online Testing 27202 NEW 7/16/2004 2004-12/5  
 R277-408 Expenditures for Instructional Supplies Required in Utah Public Schools 27308 REP 9/2/2004 2004-15/18  
 R277-413 Accreditation of Secondary Schools, Alternative or Special Purpose Schools 26959 5YR 2/26/2004 2004-6/58  
 R277-418 School Professional Development Days Pilot Program 27203 NEW 7/16/2004 2004-12/7  
 R277-422 State Supported Voted Leeway 27204 AMD 7/16/2004 2004-12/8  
 R277-425 Budgeting, Accounting, and Auditing for Utah School Districts 26960 5YR 2/26/2004 2004-6/59  
 R277-437 Student Enrollment Options 26871 5YR 1/5/2004 2004-3/42  
 R277-438 Dual Enrollment 27205 5YR 6/1/2004 2004-12/79  
 R277-444 Distribution of Funds to Arts and Sciences Organizations 26979 AMD 4/15/2004 2004-6/4  
 R277-444 Distribution of Funds to Arts and Sciences Organizations 27271 AMD 8/17/2004 2004-14/4  
 R277-451 The State School Building Program 27407 5YR 9/7/2004 2004-19/48  
 R277-451 The State School Building Program 27422 AMD 11/2/2004 2004-19/30  
 R277-462 Comprehensive Guidance Program 26850 AMD 2/5/2004 2004-1/16  
 R277-462 Comprehensive Guidance Program 27408 5YR 9/7/2004 2004-19/49  
 R277-463 Class Size Reporting 27409 5YR 9/7/2004 2004-19/49  
 R277-469 Instructional Materials Commission Operating Procedures 26999 AMD 5/5/2004 2004-7/5  
 R277-471 Oversight of School Inspections 27517 5YR 11/1/2004 2004-22/69  
 R277-486 Professional Staff Cost Program 26828 NEW 1/15/2004 2003-24/5  
 R277-501 Educator Licensing Renewal 26980 AMD 4/15/2004 2004-6/5  
 R277-501 Educator Licensing Renewal 27206 AMD 7/16/2004 2004-12/10  
 R277-502 Educator Licensing and Data Retention 26827 AMD 1/15/2004 2003-24/6  
 R277-502 Educator Licensing and Data Retention 27207 AMD 7/16/2004 2004-12/14  
 R277-502 Educator Licensing and Data Retention 27448 NSC 12/1/2004 Not Printed  
 R277-503 Licensing Routes 27270 AMD 8/17/2004 2004-14/6  
 R277-503 Licensing Routes 27357 NSC 9/1/2004 Not Printed  
 R277-504 Early Childhood, Elementary, Secondary, Special Education (K-12), Communication Disorders, and Special Education (Birth-Age 5) Certification 27410 5YR 9/7/2004 2004-19/50  
 R277-510 Special Subject Certification for Small Secondary Schools 27208 REP 7/16/2004 2004-12/18  
 R277-511 Eminence or Special Qualification Authorization for Teaching in the Public Schools 27213 REP 7/16/2004 2004-12/19  
 R277-512 Letters of Authorization 27209 REP 7/16/2004 2004-12/20  
 R277-514 Board Procedures: Sanctions for Educator Misconduct 26981 AMD 4/15/2004 2004-6/10  
 R277-517 Athletic Coaching Certification 26852 AMD 2/5/2004 2004-1/18  
 R277-518 Vocational-Technical Certificates 27000 AMD 5/5/2004 2004-7/8  
 R277-520 Appropriate Licensing and Assignment of Teachers 26851 R&R 2/5/2004 2004-1/20  
 R277-520 Appropriate Licensing and Assignment of Teachers 27210 AMD 7/16/2004 2004-12/21  
 R277-521 Professional Specialist Licensing 27411 5YR 9/7/2004 2004-19/50  
 R277-522 Entry Years Enhancements (EYE) for Quality Teaching - Level 1 Utah Teachers 27211 AMD 7/16/2004 2004-12/24  
 R277-524 Paraprofessional Qualifications 26853 NEW 2/5/2004 2004-1/25  
 R277-601 Standards for Utah School Buses and Operations 26961 5YR 2/26/2004 2004-6/59

R277-607	Truancy Prevention	27531	5YR	11/5/2004	2004-23/57
R277-609	Standards for School District Discipline Plans	27340	5YR	8/10/2004	2004-17/55
R277-615	Foreign Exchange Students	27309	REP	9/2/2004	2004-15/20
R277-700	The Elementary and Secondary School Core Curriculum	26902	AMD	3/3/2004	2004-3/10
R277-700	The Elementary and Secondary School Core Curriculum	26985	NSC	4/1/2004	Not Printed
R277-712	Advanced Placement Programs	26962	5YR	2/26/2004	2004-6/60
R277-714	Dissemination of Information About Juvenile Offenders	27412	5YR	9/7/2004	2004-19/51
R277-720	Child Nutrition Programs	26830	AMD	1/15/2004	2003-24/10
R277-720	Child Nutrition Programs	26848	NSC	2/1/2004	Not Printed
R277-724	Criteria for Sponsors Recruiting Day Care Facilities in the Child and Adult Care Food Program	26829	NEW	1/15/2004	2003-24/11
R277-725	Electronic High School	26982	NEW	4/15/2004	2004-6/12
R277-725	Electronic High School	27307	AMD	9/2/2004	2004-15/21
R277-734	Standards and Procedures for Adult Education Section 353 Funds	26963	5YR	2/26/2004	2004-6/60
R277-734	Standards and Procedures for Adult Education Section 353 Funds	27001	REP	5/5/2004	2004-7/11
R277-735	Standards and Procedures for Corrections Education Programs Serving Inmates of the Utah Department of Corrections	26870	5YR	1/5/2004	2004-3/43
R277-746	Driver Education Programs for Utah Schools	27423	AMD	11/2/2004	2004-19/32
R277-760	Flow Through Funds for Students at Risk	27413	5YR	9/7/2004	2004-19/51
R277-800	Administration of the Utah School for the Deaf and the Utah School for the Blind	27341	5YR	8/10/2004	2004-17/55
R277-916	Technology, Life, and Careers, and Work-Based Learning Programs	27212	5YR	6/1/2004	2004-12/80
<b>Rehabilitation</b>					
R280-150	Adjudicative Proceedings Under the Vocational Rehabilitation Act	27342	5YR	8/10/2004	2004-17/56
R280-201	USOR ADA Complaint Procedure	26872	5YR	1/5/2004	2004-3/43
R280-202	USOR Procedures for Individuals with the Most Severe Disabilities	26873	5YR	1/5/2004	2004-3/44
R280-203	Certification Requirements for Interpreters for the Hearing Impaired	27532	5YR	11/5/2004	2004-23/57
<b>Environmental Quality</b>					
<b>Air Quality</b>					
R307-110-12	Section IX, Control Measures for Area and Point Sources, Part C, Carbon Monoxide	26896	AMD	5/18/2004 see CPR in 04/15/2004 Bulletin	2004-3/12
R307-110-12	Section IX, Control Measures for Area and Point Sources, Part C, Carbon Monoxide	26896	CPR	5/18/2004	2004-8/87
R307-110-12	Section IX, Control Measures for Area and Point Sources, Part C, Carbon Monoxide	26983	NSC	5/18/2004	Not Printed
R307-110-12	Section IX, Control Measures for Area and Point Sources, Part C, Carbon Monoxide	27295	AMD	12/2/2004 see CPR in 11/01/2004 Bulletin	2004-15/23
R307-110-12	Section IX, Control Measures for Area and Point Sources, Part C, Carbon Monoxide	27295	CPR	12/2/2004	2004-21/34
R307-110-28	Regional Haze	26946	AMD	6/8/2004	2004-5/9
R307-110-31	Section X, Vehicle Inspection and Maintenance Program, Part A, General Requirements	26898	AMD	5/18/2004 see CPR in 04/15/2004 Bulletin	2004-3/13
R307-110-31	Section X, Vehicle Inspection and Maintenance Program, Part A, General Requirements	26898	CPR	5/18/2004	2004-8/87
R307-110-33	Section X, Vehicle Inspection and Maintenance Program, Part C, Salt Lake County	27296	AMD	10/7/2004	2004-15/24
R307-110-34	Section X, Vehicle Inspection and Maintenance Program, Part D, Utah County	26899	AMD	5/18/2004 see CPR in 04/15/2004 Bulletin	2004-3/14
R307-110-34	Section X, Vehicle Inspection and Maintenance Program, Part D, Utah County	26899	CPR	5/18/2004	2004-8/88

COMPLETE 2004 RULES INDEX

R307-110-35	Section X, Vehicle Inspection and Maintenance Program, Part E, Weber County	27344	AMD	11/4/2004	2004-17/13
R307-150	Emission Inventories	26942	5YR	2/9/2004	2004-5/43
R307-214	National Emission Standards for Hazardous Air Pollutants	26887	EXT	2/9/2004 see 5YR DAR No. 26939	Not Printed
R307-214	National Emission Standards for Hazardous Air Pollutants	26939	5YR	2/9/2004	2004-5/44
R307-214-2	Nation Emissions for Hazardous Air Pollutants	27293	AMD	10/7/2004	2004-15/28
R307-215	Emission Standards: Acid Rain Requirements	27220	5YR	6/8/2004	2004-13/68
R307-301	Utah and Weber Counties: Oxygenated Gasoline Program.	26897	AMD	5/18/2004	2004-3/15
R307-309	Davis, Salt Lake and Utah Counties, Ogden City and Any Nonattainment Area for PM10: Fugitive Emissions and Fugitive Dust	27106	EXT	6/8/2004 see 5YR DAR No. 27217	Not Printed
R307-309	Davis, Salt Lake and Utah Counties, Ogden City and Any Nonattainment Area for PM10: Fugitive Emissions and Fugitive Dust	27217	5YR	6/8/2004	2004-13/68
R307-326-7	Leaks from Petroleum Refinery Equipment	27487	NSC	12/1/2004	Not Printed
R307-343	Davis and Salt Lake Counties and Ozone Nonattainment Areas: Emissions Standards for Wood Furniture Manufacturing Operations	27144	EXT	6/8/2004 see 5YR DAR No. 27219	Not Printed
R307-343	Davis and Salt Lake Counties and Ozone Nonattainment Areas: Emission Standards for Wood Furniture Manufacturing Operations	27219	5YR	6/8/2004	2004-13/69
R307-415	Permits: Operating Permit Requirements	26940	5YR	2/9/2004	2004-5/45
R307-415-6c	Permit Content: Compliance Requirements	26947	AMD	8/3/2004 see CPR in 07/01/2004 Bulletin	2004-5/10
R307-415-6c	Permit Content: Compliance Requirements	26947	CPR	8/3/2004	2004-13/52
R307-417	Permits: Acid Rain Sources	26941	5YR	2/9/2004	2004-5/45
R307-420	Permits: Ozone Offset Requirements in Davis and Salt Lake Counties	27107	EXT	6/8/2004 see 5YR DAR No. 27218	Not Printed
R307-420	Permits: Ozone Offset Requirements in Davis and Salt Lake Counties	27218	5YR	6/8/2004	2004-13/69
<u>Drinking Water</u>					
R309-110	Administration: Definitions	26970	AMD	4/21/2004	2004-6/13
R309-204	Facility Design and Operation: Source Development	26971	AMD	4/21/2004	2004-6/23
(Changed to R309-515)					
R309-302	Required Certification Rules for Backflow Technicians in the State of Utah	27252	AMD	10/15/2004	2004-14/10
(Changed to R309-305)					
R309-605	Source Protection: Drinking Water Source Protection for Surface Water Sources	26988	NSC	5/1/2004	Not Printed
R309-700	Financial Assistance: State Drinking Water Project Revolving Loan Program	26974	AMD	8/6/2004 see CPR in 07/01/2004 Bulletin	2004-6/31
R309-700	Financial Assistance: State Drinking Water Project Revolving Loan Program	26974	CPR	8/6/2004	2004-13/53
R309-705	Financial Assistance: Federal Drinking Water Project Revolving Loan Program	26975	AMD	8/6/2004 see CPR in 07/01/2004 Bulletin	2004-6/39
R309-705	Financial Assistance: Federal Drinking Water Project Revolving Loan Program	26975	CPR	8/6/2004	2004-13/57
<u>Environmental Response and Remediation</u>					
R311-200	Underground Storage Tanks: Definitions	27194	AMD	9/9/2004	2004-12/27
R311-201	Underground Storage Tanks: Certification Programs	27195	AMD	9/9/2004	2004-12/30
R311-203	Underground Storage Tanks: Notification, New Installations, and Registration Fees	27196	AMD	9/9/2004	2004-12/34
R311-204	Underground Storage Tanks: Closure and Remediation	27197	AMD	9/9/2004	2004-12/37
R311-205	Underground Storage Tanks: Site Assessment Protocol	27198	AMD	9/9/2004	2004-12/39

R311-206	Underground Storage Tanks: Financial Assurance Mechanisms	27199	AMD	9/9/2004	2004-12/44
R311-212	Administration of the Petroleum Storage Tank Loan Fund	27200	AMD	9/9/2004	2004-12/48
<u>Radiation Control</u>					
R313-25-25	Near Surface Land Disposal Facility Operation and Disposal Site Closure	27110	NSC	5/1/2004	Not Printed
<u>Solid and Hazardous Waste</u>					
R315-2-13	Variances Authorized	27289	AMD	9/15/2004	2004-15/35
R315-317-2	Variances	27288	AMD	9/15/2004	2004-15/36
R315-320	Waste Tire Transporter and Recycler Requirements	26972	5YR	3/1/2004	2004-6/61
<u>Water Quality</u>					
R317-1	Definitions and General Requirements	26796	AMD	3/29/2004	2003-23/16
R317-2	Standards of Quality for Waters of the State	26242	AMD	1/6/2004 see CPR in 09/15/2003 Bulletin	2003-10/27
R317-2	Standards of Quality for Waters of the State	26242	CPR	1/6/2004	2003-18/35
R317-6	Ground Water Quality Protection	27021	AMD	7/12/2004	2004-8/46
R317-6	Ground Water Quality Protection	27177	AMD	8/20/2004	2004-11/8
R317-6-6	Implementation	27437	NSC	12/1/2004	Not Printed
R317-7	Underground Injection Control Program	27276	AMD	10/26/2004	2004-15/37
R317-8	Utah Pollutant Discharge Elimination System (UPDES)	26903	AMD	3/30/2004	2004-3/19
R317-10	Certification of Wastewater Works Operator	27022	AMD	6/23/2004	2004-8/52
R317-100-3	Numeric Project Priority Ranking System	27179	AMD	8/20/2004	2004-11/15
R317-103	Rural Communities Hardship Grants Program	27180	REP	8/20/2004	2004-11/16
R317-401	Graywater Systems	26797	NEW	7/2/2004 see CPR in 04/15/2004 Bulletin	2003-23/21
R317-401	Graywater Systems	26797	CPR	7/2/2004	2004-8/89
<b>Governor</b>					
<u>Planning and Budget, Chief Information Officer</u>					
R365-4	Sub-Domain Naming Conventions for Executive Branch Agencies	26953	NEW	4/15/2004	2004-5/12
R365-6	IT Plan Submission Rule for Executive Branch Agencies	27108	NEW	6/28/2004	2004-10/18
R365-7	Acceptable Use of Information Technology Resources	27119	NEW	6/28/2004	2004-10/20
R365-10	Standards, Best Practices, and Institutional Knowledge Requirements for Executive Branch Agencies	27398	NEW	11/8/2004	2004-19/38
<b>Health Administration</b>					
R380-25	Submission of Data Through an Electronic Data Interchange	27260	5YR	6/30/2004	2004-14/56
<u>Center for Health Data, Health Care Statistics</u>					
R428-10	Health Data Authority Hospital Inpatient Reporting Rule	26800	AMD	2/27/2004	2003-23/36
R428-11	Health Data Authority Ambulatory Surgical Data Reporting Rule	26799	AMD	2/27/2004	2003-23/37
<u>Children's Health Insurance Program</u>					
R382-10	Eligibility	26757	AMD	1/5/2004	2003-22/21
R382-10	Eligibility	27050	AMD	6/1/2004	2004-8/58
<u>Community and Family Health Services, Children with Special Health Care Needs</u>					
R398-1	Newborn Screening	27443	5YR	9/22/2004	2004-20/76
R398-5	Birth Defects Reporting	27444	5YR	9/22/2004	2004-20/76
<u>Community and Family Health Services, Chronic Disease</u>					
R384-100	Cancer Reporting Rule	27235	5YR	6/15/2004	2004-13/70
<u>Epidemiology and Laboratory Services, Environmental Services</u>					
R392-101	Food Safety Manager Certification	27187	5YR	5/24/2004	2004-12/80
<u>Epidemiology and Laboratory Services, Epidemiology</u>					
R386-702	Communicable Disease Rule	27024	AMD	6/11/2004	2004-8/60

COMPLETE 2004 RULES INDEX

<u>Epidemiology and Laboratory Services, Laboratory Improvement</u>					
R444-14	Rule for the Certification of Environmental Laboratories	27234	AMD	8/9/2004	2004-13/26
<u>Epidemiology and Laboratory Services, Laboratory Services</u>					
R438-13	Rules for the Certification of Institutions to Obtain Impounded Animals in the State of Utah	26968	5YR	2/27/2004	2004-6/61
<u>Health Care Financing, Coverage and Reimbursement Policy</u>					
R414-1-5	State Plan	26955	AMD	5/19/2004	2004-6/47
R414-1-14	Utilization Control	27189	AMD	7/19/2004	2004-12/52
R414-1A	Medicaid Policy for Experimental, Investigational or Unproven Medical Practices	27023	AMD	5/25/2004	2004-8/68
R414-1B	Prohibition of Payment for Certain Abortion Services	27222	EMR	6/9/2004	2004-13/64
R414-1B	Prohibition of Payment for Certain Abortion Services	27227	NEW	10/6/2004 see CPR in 09/01/2004 Bulletin	2004-13/4
R414-1B	Prohibition of Payment for Certain Abortion Services	27227	CPR	10/6/2004	2004-17/48
R414-7A	Medicaid Certification of New Nursing Facilities	27535	5YR	11/8/2004	2004-23/58
R414-7B	Nurse Aide Training and Competency Evaluation Program	27524	5YR	11/3/2004	2004-23/58
R414-9	Federally Qualified Health Centers	26854	NEW	2/3/2004	2004-11/26
R414-9	Federally Qualified Health Centers	27151	NSC	6/1/2004	Not Printed
R414-11	Podiatry Services	27525	5YR	11/3/2004	2004-23/59
R414-14	Home Health Service	27482	5YR	10/6/2004	2004-21/39
R414-14A	Hospice Care	27481	5YR	10/6/2004	2004-21/39
R414-25	Mental Health Clinic Services	27426	REP	11/3/2004	2004-19/40
R414-26	Implementation and Maintenance of the Health Care Financing Administration Common Procedure Coding System (HCPCS)	27315	REP	9/16/2004	2004-16/10
R414-31	Inpatient Psychiatric Services for Individuals Under Age 21 in Psychiatric Facilities or Programs	27483	5YR	10/6/2004	2004-21/40
R414-33B	Substance Abuse Targeted Case Management	27327	NEW	10/15/2004	2004-16/12
R414-34	Substance Abuse Services	27323	NEW	10/15/2004	2004-16/14
R414-35	Mental Health Services for Children in State Custody	27516	NEW	12/16/2004	2004-22/17
R414-36	Services by Community Mental Health Centers	27322	NEW	11/3/2004	2004-16/15
R414-49	Dental Service	26964	AMD	5/7/2004	2004-6/48
R414-49	Dental Service	27176	AMD	7/2/2004	2004-11/17
R414-49	Dental Service	27541	5YR	11/12/2004	2004-23/59
R414-50	Dental, Oral and Maxillofacial Surgeons	26802	AMD	1/28/2004	2003-24/13
R414-50	Dental, Oral and Maxillofacial Surgeons	27526	5YR	11/3/2004	2004-23/60
R414-51	Dental, Orthodontia	26782	AMD	1/28/2004	2003-23/25
R414-53	Eyeglasses Services	26783	AMD	1/28/2004	2003-23/28
R414-54	Speech-Language Pathology Services	26803	AMD	1/28/2004	2003-24/14
R414-54	Speech-Language Pathology Services	27012	5YR	3/23/2004	2004-8/94
R414-54	Speech-Language Pathology Services	27366	AMD	10/25/2004	2004-18/17
R414-55	Medicaid Policy for Hospital Emergency Department Copayment Procedures	27049	AMD	6/17/2004	2004-8/69
R414-58	Children's Organ Transplants	26935	5YR	2/3/2004	2004-5/46
R414-71	Medical Supplies - Parenteral, Enteral, and IV Therapy	27231	NEW	8/5/2004	2004-13/5
R414-71	Medical Supplies - Parenteral, Enteral, and IV Therapy	27385	NSC	9/1/2004	Not Printed
R414-90	Diabetes Self-Management Training	27316	NEW	9/16/2004	2004-16/17
R414-99	Chiropractic Services	26809	NEW	2/17/2004	2003-24/15
R414-140	Choice of Health Care Delivery Program	27314	NEW	9/16/2004	2004-16/19
R414-300	Primary Care Network, Covered-at-Work Demonstration Waiver	26811	NEW	2/10/2004	2003-24/17
R414-303	Coverage Groups	27230	AMD	8/26/2004	2004-13/7
R414-303	Coverage Groups	27378	AMD	10/16/2004	2004-18/18
R414-304	Income and Budgeting	27232	AMD	8/26/2004	2004-13/14
R414-304	Income and Budgeting	27379	AMD	10/16/2004	2004-18/21
R414-305-3	Spousal Impoverishment Resource Rules for Married Institutionalized Individuals	26965	AMD	5/7/2004	2004-6/50
R414-306	Program Benefits	27216	AMD	7/19/2004	2004-12/53
R414-306	Program Benefits	27334	NSC	11/1/2004	Not Printed
R414-310	Medicaid Primary Care Network Demonstration Waiver	26810	AMD	2/10/2004	2003-24/18
R414-310	Medicaid Primary Care Network Demonstration Waiver	27515	AMD	12/16/2004	2004-22/18
R414-401	Nursing Care Facility Assessment	27143	NEW	7/2/2004	2004-11/19
R414-501	Preadmission and Continued Stay Review	27370	5YR	8/27/2004	2004-18/82
R414-502	Nursing Facility Levels of Care	27371	5YR	8/27/2004	2004-18/82
R414-503	Preadmission Screening and Annual Resident Review	27373	5YR	8/27/2004	2004-18/83

R414-504	Nursing Facility Payments	27171	AMD	7/2/2004	2004-11/20
R414-504	Nursing Facility Payments	27325	AMD	9/15/2004	2004-16/20
<u>Health Systems Improvement, Child Care Licensing</u>					
R430-2	General Licensing Provisions, Child Care Facilities	26824	AMD	4/12/2004	2003-24/25
R430-8	Exclusions from Child Care Licensing - Parochial Education Institution	27242	5YR	6/16/2004	2004-14/57
R430-100	Child Care Center	27244	AMD	8/27/2004	2004-14/15
<u>Health Systems Improvement, Emergency Medical Services</u>					
R426-11	General Provisions	27466	5YR	10/1/2004	2004-20/77
R426-12	Emergency Medical Services Training and Certification Standards	27439	5YR	9/20/2004	2004-20/77
R426-13	Emergency Medical Services Provider Designations	27463	5YR	10/1/2004	2004-20/78
R426-14	Ambulance Service and Paramedic Service Licensure	27465	5YR	10/1/2004	2004-20/78
R426-15	Licensed and Designated Provider Operations	27467	5YR	10/1/2004	2004-20/79
R426-16	Emergency Medical Services Maximum Ambulance Transportation Rates and Charges	27464	5YR	10/1/2004	2004-20/79
R426-100	Emergency Medical Services Do Not Resuscitate	27468	5YR	10/1/2004	2004-20/80
<u>Health Systems Improvement, Licensing</u>					
R432-1	General Health Care Facility Rules	26868	5YR	1/5/2004	2004-3/44
R432-2	General Licensing Provisions	26876	5YR	1/5/2004	2004-3/45
R432-2	General Licensing Provisions	27303	AMD	9/14/2004	2004-15/44
R432-2-11	Expiration and Renewal	26825	AMD	4/12/2004	2003-24/26
R432-3	General Health Care Facility Rules Inspection and Enforcement	26875	5YR	1/5/2004	2004-3/45
R432-4	General Construction	26869	5YR	1/5/2004	2004-3/46
R432-5	Nursing Facility Construction	26877	5YR	1/5/2004	2004-3/46
R432-6	Assisted Living Facility General Construction	26886	5YR	1/8/2004	2004-3/47
R432-32	Licensing Exemption for Non-Profit Volunteer End-of-Life Care	27250	NEW	9/1/2004	2004-14/17
R432-100-7	Medical and Professional Staff	27374	AMD	11/10/2004	2004-18/24
R432-100-16	Emergency Care Services	26755	AMD	1/9/2004	2003-22/24
R432-100-17	Perinatal Services	27186	AMD	7/19/2004	2004-12/57
R432-150-6	Reserved	26993	AMD	5/26/2004	2004-7/13
R432-150-16	Physician Services	27372	AMD	11/10/2004	2004-18/25
R432-270-29b	Adult Day Care Services	26992	AMD	5/26/2004	2004-7/15
<b>Human Resource Management</b>					
<u>Administration</u>					
R477-1	Definitions	27160	AMD	7/2/2004	2004-11/23
R477-2	Administration	27161	AMD	7/2/2004	2004-11/29
R477-3	Classification	27162	AMD	7/2/2004	2004-11/32
R477-4	Filling Positions	27163	AMD	7/2/2004	2004-11/33
R477-5	Employee Status and Probation	27172	NSC	7/1/2004	Not Printed
R477-6	Compensation	27165	AMD	7/2/2004	2004-11/37
R477-7	Leave	27166	AMD	7/2/2004	2004-11/42
R477-7-16	Workers Compensation Leave	27272	NSC	7/2/2004	Not Printed
R477-8	Working Conditions	27167	AMD	7/2/2004	2004-11/50
R477-8-6	Overtime	27273	NSC	7/2/2004	Not Printed
R477-9	Employee Conduct	27168	AMD	7/2/2004	2004-11/53
R477-10	Employee Development	27173	NSC	7/1/2004	Not Printed
R477-11	Discipline	27169	AMD	7/2/2004	2004-11/56
R477-12	Separations	27170	AMD	7/2/2004	2004-11/57
R477-14	Substance Abuse and Drug-Free Workplace	27174	NSC	6/1/2004	Not Printed
R477-15	Unlawful Harassment Policy and Procedure	27175	NSC	7/1/2004	Not Printed
<b>Human Services</b>					
<u>Administration</u>					
R495-879	Parental Support for Children in Care	26822	AMD	1/26/2004	2003-24/27
R495-882	Termination of Parental Rights	26936	NEW	6/29/2004	2004-5/13
<u>Administration, Administrative Hearings</u>					
R497-100	Adjudicative Proceedings	27254	NSC	7/1/2004	Not Printed

COMPLETE 2004 RULES INDEX

Administration, Administrative Services, Licensing

R501-1	General Provisions	27008	NSC	4/1/2004	Not Printed
R501-2	Core Standards	26925	AMD	3/17/2004	2004-4/16
R501-2	Core Rules	27135	NSC	7/1/2004	Not Printed
R501-7	Child Placing Agencies	26904	AMD	5/28/2004	2004-4/22
R501-7	Child Placing Adoption Agencies	27229	AMD	8/5/2004	2004-13/28
R501-7	Child Placing Adoption Agencies	27415	NSC	10/1/2004	Not Printed
R501-8	Outdoor Youth Programs	27255	NSC	7/1/2004	Not Printed
R501-12	Child Foster Care	27256	NSC	7/1/2004	Not Printed
R501-12	Child Foster Care	27275	AMD	9/9/2004	2004-15/46
R501-12-8	Safety	27417	NSC	10/1/2004	Not Printed
R501-16	Intermediate Secure Treatment Programs for Minors	26804	AMD	4/12/2004	2003-24/29
R501-16	Intermediate Secure Treatment Programs for Minors	26874	NSC	5/1/2004	Not Printed

Aging and Adult Services

R510-107	Title V Senior Community Services Employment Program Standards and Procedures	27248	EMR	7/1/2004	2004-14/43
R510-107	Title V Senior Community Service Employment Program Standards and Procedures	27249	AMD	8/17/2004	2004-14/18

Child and Family Services

R512-3	Procedures for Establishing Policy	26774	EXT	3/4/2004 see EXD DAR No. 27014	Not Printed
R512-3	Procedures for Establishing Policy	27014	EXD	3/4/2004	Not Printed
R512-32	Children with Reportable Communicable Diseases	27259	NSC	7/1/2004	Not Printed
R512-41	Qualifying Adoptive Families and Adoption Placement	27375	5YR	8/27/2004	2004-18/83
R512-302-4	Selection of a Caregiver for a Child Receiving Out of Home Services	27274	AMD	9/9/2004	2004-15/50
R512-306	Independent Living Services, Education and Training Voucher Program	27243	EMR	6/22/2004	2004-14/50
R512-306	Independent Living Services, Education and Training Voucher Program	27321	NEW	9/22/2004	2004-16/24

Mental Health

R523-1	Policies and Procedures	27258	NSC	7/1/2004	Not Printed
R523-1-10	Allocation of Utah State Hospital Bed Days to Local Mental Health Authorities	27117	AMD	6/17/2004	2004-10/21
R523-1-16	Pediatric Bed Allocation at the Utah State Hospital	27118	AMD	6/17/2004	2004-10/23
R523-1-22	Rural Mental Health Therapist Scholarship and Grants	27257	AMD	8/17/2004	2004-14/25

Recovery Services

R527-38	Unenforceable Cases	27223	NEW	8/5/2004	2004-13/34
R527-200-10	Availability of a Hearing in Informal Adjudicative Proceedings	27376	AMD	10/18/2004	2004-18/26
R527-201	Medical Support Services	27434	AMD	11/30/2004	2004-20/15
R527-210	Guidelines for Setting Child Support Awards	26889	5YR	1/13/2004	2004-3/48
R527-231	Review and Adjustment of Child Support Order	27006	AMD	5/19/2004	2004-8/71
R527-258	Enforcing Child Support When the Obligor is an Ex-Prisoner or in a Treatment Program	27007	AMD	5/19/2004	2004-8/72
R527-300	Income Withholding	27391	AMD	11/30/2004	2004-18/27
R527-302	Income Withholding Fees	27109	5YR	4/21/2004	2004-10/38
R527-475	State Tax Refund Intercept	27182	AMD	7/21/2004	2004-12/59

Services for People with Disabilities

R539-1	Eligibility	27233	AMD	8/19/2004	2004-13/35
R539-1	Eligibility	27356	NSC	11/1/2004	Not Printed

Substance Abuse

R544-1	Division Rules of Administration	27508	NSC	12/1/2004	Not Printed
(Changed to R523-20)					
R544-2	Rules Governing Methadone Providers	27509	NSC	12/1/2004	Not Printed
(Changed to R523-21)					
R544-4	Utah Standards for Approval of Alcohol and Drug Educational Programs for Court-Referred DUI Offenders	27511	NSC	12/1/2004	Not Printed
(Changed to R523-22)					

R544-5	Alcohol Training and Education Seminar Rules of Administration	27512	NSC	12/1/2004	Not Printed
(Changed to R523-23)					
<u>Youth Corrections</u>					
R547-1	Residential and Nonresidential, Nonsecure Community Program Standards	27261	NSC	7/1/2004	Not Printed
R547-3	Juvenile Jail Standards	27262	NSC	7/1/2004	Not Printed
R547-6	Youth Parole Authority Policies and Procedures	27264	NSC	7/1/2004	Not Printed
R547-7	Juvenile Holding Room Standards	27265	NSC	7/1/2004	Not Printed
R547-10	Ex-Offender Policy	27284	NSC	7/1/2004	Not Printed
R547-12	Division of Youth Corrections Classification of Records	27266	NSC	7/1/2004	Not Printed
R547-13	Guidelines for Admission to Secure Youth Detention Facilities	27263	NSC	7/1/2004	Not Printed
R547-14	Possession of Prohibited Items in Juvenile Detention Facilities	27267	NSC	7/1/2004	Not Printed
<u>Insurance Administration</u>					
R590-67	Proxy Solicitations and Consent and Authorization of Stockholders of Domestic Stock Insurers	27452	5YR	9/28/2004	2004-20/81
R590-76	Health Maintenance Organizations and Limited Health Plans	27445	5YR	9/23/2004	2004-20/81
R590-79	Life Insurance Disclosure Rule	27447	5YR	9/27/2004	2004-20/82
R590-83	Unfair Discrimination on the Basis of Sex or Marital Status	27450	5YR	9/28/2004	2004-20/83
R590-83-1	Authority	27477	NSC	12/1/2004	Not Printed
R590-86	Filing of Life and Disability Forms and Rates	26978	REP	4/23/2004	2004-6/53
R590-93	Replacement of Life Insurance and Annuities	27121	5YR	4/28/2004	2004-10/38
R590-98	Unfair Practice in Payment of Life Insurance and Annuity Policy Values	27122	5YR	4/28/2004	2004-10/39
R590-102	Insurance Department Fee Payment Rule	26787	AMD	1/8/2004	2003-23/39
R590-102	Insurance Department Fee Payment Rule	27345	AMD	10/7/2004	2004-17/14
R590-102-5	Admitted Insurer Annual License and Annual Service Fees	26882	NSC	2/1/2004	Not Printed
R590-127	Rate Filing Exemptions	27446	5YR	9/24/2004	2004-20/83
R590-129	Unfair Discrimination Based Solely Upon Blindness or Physical or Mental Impairment	27449	5YR	9/28/2004	2004-20/84
R590-129-1	Authority	27476	NSC	12/1/2004	Not Printed
R590-136	Title Insurance Agents' Annual Reports	27287	NSC	8/1/2004	Not Printed
R590-153	Unfair Inducements and Marketing Practices in Obtaining Title Insurance Business	26791	AMD	5/13/2004 see CPR in 04/01/2004 Bulletin	2003-23/41
R590-153	Unfair Inducements and Marketing Practices in Obtaining Title Insurance Business	26791	CPR	5/13/2004	2004-7/31
R590-160-5	Rules Applicable to All Proceedings	27134	NSC	7/1/2004	Not Printed
R590-166	Home Protection Service Contract Rule	27126	5YR	4/28/2004	2004-10/39
R590-167	Individual and Small Employer Health Insurance Rule	27451	5YR	9/28/2004	2004-20/84
R590-167	Individual and Small Employer Health Insurance Rule	27150	AMD	10/7/2004 see CPR in 09/01/2004 Bulletin	2004-11/60
R590-167	Individual Small Employer, and Group Health Insurance Rule	27150	CPR	10/7/2004	2004-17/49
R590-167	Individual, Small Employer, and Group Health Benefit Plan Rule	27484	NSC	12/1/2004	Not Printed
R590-170	Fiduciary and Trust Account Obligations	26976	5YR	3/1/2004	2004-6/62
R590-175	Basic Health Care Plan Rule	27478	NSC	12/1/2004	Not Printed
R590-187	Assessment of Title Insurance Agencies and Title Insurers for Costs Related to Regulation of Title Insurance	26792	AMD	1/8/2004	2003-23/44
R590-187	Assessment of Title Insurance Agencies and Title Insurers for Costs Related to Regulation of Title Insurance	26885	NSC	3/1/2004	Not Printed
R590-190	Unfair Property, Liability and Title Claims Settlement Practices Rule	27113	5YR	4/26/2004	2004-10/40
R590-190-1	Authority	27114	NSC	5/1/2004	Not Printed

COMPLETE 2004 RULES INDEX

R590-191	Unfair Life Insurance Claims Settlement Practices Rule	27115	5YR	4/26/2004	2004-10/40
R590-191-1	Authority	27116	NSC	5/1/2004	Not Printed
R590-192	Unfair Accident and Health and Income Replacement Claims Settlement Practices Rule	27319	5YR	7/30/2004	2004-16/33
R590-194	Coverage of Dietary Products for Inborn Errors of Amino Acid or Urea Cycle Metabolism	27536	5YR	11/9/2004	2004-23/60
R590-195	Rental Car Related Licensing Rule	27011	5YR	3/19/2004	2004-8/97
R590-195	Rental Car Related Licensing Rule	27010	NSC	6/1/2004	Not Printed
R590-197	Treatment of Guaranty Association Assessments as Qualified Assets	27618	5YR	12/29/2004	2005-2/168
R590-198	Valuation of Life Insurance Policies	27619	5YR	12/29/2004	2005-2/169
R590-204	Adoption Indemnity Benefit	27191	REP	7/27/2004	2004-12/60
R590-220	Submission of Accident and Health Insurance Filings	26806	NEW	3/24/2004 see CPR in 02/15/2004 Bulletin	2003-24/33
R590-220	Submission of Accident and Health Insurance Filings	26806	CPR	3/24/2004	2004-4/61
R590-220	Submission of Accident and Health Insurance Filings	27013	NSC	4/1/2004	Not Printed
R590-225	Submission of Property and Casualty Rate and Form Filings	26821	NEW	3/24/2004 see CPR in 02/15/2004 Bulletin	2003-24/38
R590-225	Submission of Property Casualty Rate and Form Filings	26821	CPR	3/24/2004	2004-4/64
R590-226	Submission of Life Insurance Filings	26951	NEW	4/8/2004	2004-5/14
R590-227	Submission of Annuity Filings	26952	NEW	4/8/2004	2004-5/20
R590-228	Submission of Credit Life and Credit Accident and Health Insurance Form and Rate Filings	26950	NEW	4/8/2004	2004-5/25
R590-229	Annuity Disclosure	27082	NEW	10/7/2004 see CPR (First) in 07/01/2004 Bulletin	2004-9/12
R590-229	Annuity Disclosure	27082	CPR	10/7/2004 see CPR (Second) in 09/01/2004 Bulletin	2004-13/60
R590-229	Annuity Disclosure	27082	CPR	10/7/2004	2004-17/53
R590-230	Senior Protection in Annuity Transactions	27083	NEW	6/3/2004	2004-9/14
R590-230-5	Senior Protection in Annuity Transactions	27339	NSC	9/1/2004	Not Printed
R590-232	Authorization for a Health Maintenance Organization to Provide Services as Third Party Administrator of Health Care Benefits	27506	NEW	12/29/2004	2004-22/49
<b>Labor Commission</b>					
<u>Adjudication</u>					
R602-1	General Provisions	26772	AMD	1/2/2004	2003-23/46
R602-2-1	Pleadings and Discovery	26773	AMD	1/2/2004	2003-23/47
R602-2-4	Attorney Fees	27492	AMD	12/2/2004	2004-21/17
<u>Antidiscrimination and Labor, Labor</u>					
R610-4	Employment Agency Licensing	27228	5YR	6/11/2004	2004-13/71
<u>Industrial Accidents</u>					
R612-4-2	Premium Rates for the Uninsured Employers' Fund and the Employers' Reinsurance Fund	27493	AMD	12/2/2004	2004-21/19
R612-8	Procedural Guidelines for the Reemployment Act	27459	5YR	9/30/2004	2004-20/85
R612-9	Designation of the Initial Assessment of Noncompliance Penalties as an Informal Proceeding	27595	5YR	12/17/2004	2005-2/169
<u>Occupational Safety and Health</u>					
R614-1-4	Incorporation of Federal Standards	27147	AMD	7/2/2004	2004-11/67
R614-1-4	Incorporation of Federal Standards	27311	NSC	9/1/2004	Not Printed
R614-1-4	Incorporation of Federal Standards	27494	AMD	12/2/2004	2004-21/20
R614-1-5	Adoption and Extension of Established Federal Safety Standards and State of Utah General Safety Orders	27148	AMD	7/2/2004	2004-11/69

<b>Safety</b>					
R616-2-3	Safety Codes and Rules for Boilers and Pressure Vessels	26967	AMD	4/15/2004	2004-6/55
R616-3-3	Safety Codes for Elevators	26966	AMD	4/15/2004	2004-6/56
<b>Lieutenant Governor</b>					
<b>Administration</b>					
R622-2	Use of the Great Seal of the State of Utah	27221	5YR	6/9/2004	2004-13/71
<b>Elections</b>					
R623-1	Lieutenant Governor's Procedure for Regulation of Lobbyist Activities	27381	AMD	10/19/2004	2004-18/28
R623-1	Lieutenant Governor's Procedures for Regulation of Lobbyist Activities	27530	5YR	11/4/2004	2004-23/61
R623-2	Uniform Ballot Counting Standards	27123	NEW	6/16/2004	2004-10/24
R623-3	Utah State Plan on Election Reform	27127	NEW	6/16/2004	2004-10/27
R623-3	Utah State Plan on Election Reform	27414	NSC	11/15/2004	Not Printed
R623-3	Utah State Plan on Election Reform	27537	NSC	11/15/2004	Not Printed
R623-4	Uniform Procedures for Military and Overseas Citizens Absentee Applications and Ballots	27406	EMR	9/10/2004	2004-19/45
<b>Money Management Council</b>					
<b>Administration</b>					
R628-19	Requirements for the Use of Investment Advisers by Public Treasurers	26676	NEW	2/10/2004 see CPR in 01/01/2004 Bulletin	2003-20/27
R628-19	Requirements for the Use of Investment Advisers by Public Treasurers	26676	CPR	2/10/2004	2004-1/38
<b>Natural Resources</b>					
<b>Forestry, Fire and State Lands</b>					
R652-40-1800	Abandonment	26865	AMD	2/24/2004	2004-2/2
R652-41-1300	Unauthorized Uses	27070	AMD	6/4/2004	2004-9/17
<b>Oil, Gas and Mining; Coal</b>					
R645-301-100	General Contents	26710	AMD	2/6/2004	2003-22/34
R645-301-500	Engineering	26711	AMD	2/6/2004	2003-22/35
R645-303-200	Permit Review, Change and Renewal	26712	AMD	2/6/2004	2003-22/36
R645-401	Inspection and Enforcement: Civil Penalties	26713	AMD	2/6/2004	2003-22/38
<b>Oil, Gas and Mining; Non-Coal</b>					
R647-1-106	Definitions	27015	AMD	6/1/2004	2004-8/74
R647-6	Inspection and Enforcement: Division Authority and Procedures	27016	NEW	6/1/2004	2004-8/76
R647-7	Inspection and Enforcement: Civil Penalties	27017	NEW	6/1/2004	2004-8/79
R647-8	Inspection and Enforcement: Individual Civil Penalties	27018	NEW	6/1/2004	2004-8/83
<b>Parks and Recreation</b>					
R651-406	Off-Highway Vehicle Registration Fees	27304	AMD	10/1/2004	2004-15/51
R651-407	Off-Highway Vehicle Advisory Council	27153	AMD	7/5/2004	2004-11/71
R651-411	OHV Use in State Parks	27183	NEW	7/19/2004	2004-12/61
R651-601-17	Definitions	27181	AMD	7/19/2004	2004-12/62
R651-611	Fee Schedule	26776	AMD	1/6/2004	2003-23/52
R651-611	Fee Schedule	26948	AMD	4/1/2004	2004-5/29
R651-611	Fee Schedule	27184	AMD	7/19/2004	2004-12/62
R651-611	Fee Schedule	27305	AMD	9/1/2004	2004-15/52
R651-615-7	Motorized Transportation Devices	27185	AMD	7/19/2004	2004-12/65
R651-619-2	Alcohol in Buildings	27154	AMD	7/5/2004	2004-11/72
R651-620	Protection of Resources Park System Property	27442	AMD	11/16/2004	2004-20/32
R651-626	Skating and Skateboards	27152	AMD	7/5/2004	2004-11/73
R651-633	Special Closures or Restrictions	27139	5YR	5/3/2004	2004-11/91
R651-634-1	User Fees	27306	AMD	9/1/2004	2004-15/54
<b>Water Resources</b>					
R653-2	Financial Assistance from the Board of Water Resources	26779	AMD	1/7/2004	2003-23/56
R653-5	Cloud Seeding	26784	AMD	1/7/2004	2003-23/59

COMPLETE 2004 RULES INDEX

Water Rights

R655-13	Stream Alteration	26814	NEW	3/25/2004	2003-24/43
R655-13	Stream Alteration	26884	NSC	3/25/2004	Not Printed
R655-13	Stream Alteration	26984	AMD	5/4/2004	2004-7/16
R655-13	Stream Alteration	27005	NSC	6/1/2004	Not Printed

Wildlife Resources

R657-5	Taking Big Game	26817	AMD	1/21/2004	2003-24/46
R657-5	Taking Big Game	27159	AMD	7/2/2004	2004-11/74
R657-6	Taking Upland Game	27283	AMD	9/1/2004	2004-15/55
R657-9	Taking Waterfowl, Common Snipe and Coot	27367	AMD	10/19/2004	2004-18/47
R657-10	Taking Cougar	27368	AMD	10/19/2004	2004-18/49
R657-11	Taking Furbearers	27369	AMD	10/19/2004	2004-18/51
R657-13	Taking Fish and Crayfish	26659	AMD	1/2/2004	2003-20/28
R657-17-4	General Deer Permits and Tags	26818	AMD	1/21/2004	2003-24/55
R657-26-5	Hearings	27497	AMD	12/2/2004	2004-21/21
R657-27	License Agent Procedures	27158	AMD	7/2/2004	2004-11/77
R657-33	Taking Bear	26867	AMD	2/24/2004	2004-2/3
R657-38	Dedicated Hunter Program	26819	AMD	1/21/2004	2003-24/56
R657-41	Conservation and Sportsman Permits	26778	AMD	1/5/2004	2003-23/61
R657-42	Accepted Payment of Fees, Late Fees, Exchanges, Surrenders, Refunds and Reallocation of Licenses, Certificates of Registration and Permits	26820	AMD	1/21/2004	2003-24/61
R657-42	Accepted Payment of Fees, Late Fees, Exchanges, Surrenders, Refunds and Reallocation of Licenses, Certificates of Registration and Permits	27239	AMD	8/3/2004	2004-13/41
R657-46	The Use of Game Birds in Dog Field Trials and Training	27346	EXT	10/19/2004 see 5YR DAR No. 27500	Not Printed
R657-46	The Use of Game Birds in Dog Field Trials and Training	27500	5YR	10/19/2004	2004-22/70
R657-50	Error Remedy Rule	27240	AMD	8/3/2004	2004-13/44
R657-54	Taking Wild Turkey	27498	NEW	12/2/2004	2004-21/23

**Professional Practices Advisory Commission**

Administration

R686-103	Professional Practices and Conduct for Utah Educators	27141	5YR	5/5/2004	2004-11/91
R686-103	Professional Practices and Conduct for Utah Educators	27310	AMD	9/2/2004	2004-15/58

**Public Safety**

Administration

R698-4	Certification of the Law Enforcement Agency of a Private College or University	26969	5YR	2/27/2004	2004-6/62
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Comprehensive Emergency Management

R704-1	Search and Rescue Financial Assistance Program	27336	5YR	8/6/2004	2004-17/56
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Criminal Investigations and Technical Services, Criminal Identification

R722-900	Review and Challenge of Criminal Record	26858	EXT	1/15/2004 see 5YR DAR No. 26895	Not Printed
R722-900	Review and Challenge of Criminal Record	26895	5YR	1/15/2004	2004-3/48

Driver License

R708-2	Commercial Driver Training Schools	26894	AMD	3/4/2004	2004-3/27
R708-2	Commercial Driver Training Schools	27245	EMR	7/1/2004	2004-14/52
R708-2	Commercial Driver Training Schools	27246	AMD	8/17/2004	2004-14/27
R708-3	Driver License Point System Administration	27142	EMR	5/5/2004	2004-11/88
R708-3	Driver License Point System Administration	27251	AMD	8/17/2004	2004-14/30
R708-10	Classified License System	27051	NSC	6/1/2004	Not Printed
R708-10	Classified License System	27360	5YR	8/25/2004	2004-18/84
R708-22	Commercial Driver License Administrative Proceedings	27361	5YR	8/25/2004	2004-18/84
R708-24	Renewal of a Commercial Driver License (CDL)	27365	5YR	8/25/2004	2004-18/85
R708-26	Temporary Learner Permit Rule	27362	5YR	8/25/2004	2004-18/85
R708-26	Temporary Learner Permit Rule	27363	NSC	9/1/2004	Not Printed
R708-30	Motorcycle Rider Training Schools	26918	5YR	1/27/2004	2004-4/76
R708-31	Ignition Interlock Systems	27364	5YR	8/25/2004	2004-18/86

Fire Marshal

R710-1-9	Adjudicative Proceedings	27479	AMD	12/2/2004	2004-21/27
R710-2	Rules Pursuant to the Utah Fireworks Act	26795	AMD	1/2/2004	2003-23/65
R710-2	Rules Pursuant to the Utah Fireworks Act	27324	AMD	9/15/2004	2004-16/26
R710-3	Assisted Living Facilities	27433	AMD	11/16/2004	2004-20/35
R710-4	Buildings Under the Jurisdiction of the State Fire Prevention Board	26793	AMD	1/2/2004	2003-23/67
R710-4	Buildings Under the Jurisdiction of the State Fire Prevention Board	26920	EMR	1/28/2004	2004-4/66
R710-4	Buildings Under the Jurisdiction of the State Fire Prevention Board	27003	AMD	5/5/2004	2004-7/19
R710-5	Automatic Fire Sprinkler System Inspecting and Testing	26900	AMD	3/3/2004	2004-3/32
R710-5	Automatic Fire Sprinkler System Inspecting and Testing	27326	AMD	9/15/2004	2004-16/27
R710-6	Liquefied Petroleum Gas Rules	26801	AMD	1/16/2004	2003-24/63
R710-6-1	Adoption, Title, Purpose and Scope	26938	AMD	4/1/2004	2004-5/32
R710-6-6	Fees	27351	AMD	10/4/2004	2004-17/27
R710-7-7	Adjudicative Proceedings	27480	AMD	12/2/2004	2004-21/28
R710-8	Day Care Rules	27436	AMD	11/16/2004	2004-20/38
R710-9	Rules Pursuant to the Utah Fire Prevention Law	26788	AMD	1/2/2004	2003-23/72
R710-9	Rules Pursuant to the Utah Fire Prevention Law	26919	EMR	1/28/2004	2004-4/70
R710-9	Rules Pursuant to the Utah Fire Prevention Law	27002	AMD	5/5/2004	2004-7/23

Highway Patrol

R714-600	Performance Standards for Tow-Truck Motor Carriers	27100	EXT	8/6/2004 see 5YR DAR No. 27337	Not Printed
R714-600	Performance Standards for Tow-Truck Motor Carriers	27337	5YR	8/6/2004	2004-17/57

Peace Officer Standards and Training

R728-502	Procedure for POST Instructor Certification	27317	NEW	12/10/2004	2004-16/29
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**Public Service Commission**

Administration

R746-100	Practice and Procedure Governing Formal Hearings	26849	AMD	4/1/2004 see CPR in 03/01/2004 Bulletin	2004-1/28
R746-100	Practice and Procedure Governing Formal Hearings	26849	CPR	4/1/2004	2004-5/36
R746-200-6	Termination of Service	26780	AMD	1/7/2004	2003-23/76
R746-348-6	Ancillary Features and Functions	26826	AMD	4/13/2004	2003-24/65
R746-350	Application to Discontinue or Curtail Telecommunications Services	26785	NEW	1/15/2004	2003-23/79
R746-350	Application to Discontinue Telecommunications Service	26901	NSC	3/1/2004	Not Printed
R746-365	Inter-carrier Service Quality	26883	5YR	1/6/2004	2004-3/49
R746-401	Reporting of Construction, Purchase, Acquisition, Sale, Transfer or Disposition of Assets	27585	5YR	12/13/2004	2005-1/35

**Regents (Board Of)**

Administration

R765-605	Utah Centennial Opportunity Program for Education	27390	AMD	10/19/2004	2004-18/52
R765-605-3	Utah Centennial Opportunity Program for Education	27431	NSC	11/1/2004	Not Printed
R765-612	Lender Participation	27387	AMD	10/19/2004	2004-18/56

Salt Lake Community College

R784-1	Government Records Access and Management Act Rules	26994	5YR	3/12/2004	2004-7/36
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University of Utah, Administration

R805-1	Operating Regulations for Bicycles, Skateboards and Scooters	26914	5YR	1/27/2004	2004-4/76
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University of Utah, Museum of Natural History (Utah)

R807-1	Curation of Collections from State Lands	26913	5YR	1/26/2004	2004-4/77
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**School and Institutional Trust Lands**

Administration

R850-10	Expedited Rulemaking	27598	5YR	12/22/2004	2005-2/170
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COMPLETE 2004 RULES INDEX

R850-70	Sales of Forest Products from Trust Lands Administration Lands	27178	AMD	7/2/2004	2004-11/80
R850-80	Sale of Trust Lands	27347	AMD	10/4/2004	2004-17/32
<b>Tax Commission Administration</b>					
R861-1A-16	Utah State Tax Commission Management Plan Pursuant to Utah Code Ann. Section 59-1-207	27268	NSC	7/1/2004	Not Printed
R861-1A-37	Provisions Relating to Disclosure of Commercial Information Pursuant to Utah Code Ann. Section 59-1-404	27155	AMD	8/2/2004	2004-11/83
R861-1A-37	Provisions Relating to Disclosure of Commercial Information Pursuant to Utah Code Ann. Section 59-1-404	27354	AMD	10/19/2004	2004-17/36
R861-1A-38	Class Actions Pursuant to Utah Code Ann. Section 59-1-304	27236	AMD	9/14/2004	2004-13/47
<b>Auditing</b>					
R865-4D-24	Off-Highway Use of Undyed Diesel Fuel Pursuant to Utah Code Ann. Section 59-13-301	27389	AMD	10/19/2004	2004-18/57
R865-6F-8	Allocation and Apportionment of Net Income (Uniform Division of Income for Tax Purposes Act) Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321	27388	AMD	10/19/2004	2004-18/58
R865-6F-36	Taxation of Registered Securities or Commodities Broker or Dealer Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321	27386	AMD	10/19/2004	2004-18/61
R865-7H	Environmental Assurance Fee	26957	5YR	2/25/2004	2004-6/63
R865-9I-38	Pensions and Annuities Pursuant to Utah Code Ann. Section 59-10-114	27093	AMD	6/29/2004	2004-9/18
R865-12L-7	Public Utilities Point of Sale Pursuant to Utah Code Ann. 59-12-207	27056	AMD	6/29/2004	2004-9/20
R865-12L-15	Resort Communities' Tax Pursuant to Utah Code Ann. Section 59-12-401	27060	AMD	6/29/2004	2004-9/24
R865-12L-16	Notification to Tax Commission Upon Change in the Election to Collect County or Municipality Imposed Transient Room Taxes Pursuant to Utah Code Ann. Sections 59-12-302 and 59-12-354	27061	AMD	6/29/2004	2004-9/25
R865-12L-17	Procedures for Administration of the Tourism, Recreation, Cultural, and Convention Facilities Tax Pursuant to Utah Code Ann. Sections 59-12-602 and 59-12-603	27062	AMD	6/29/2004	2004-9/26
R865-13G-10	Exemption for Collective Purchase of Motor Fuels by State and Local Government Agencies Pursuant to Utah Code Ann. Section 59-13-201	27269	AMD	9/14/2004	2004-14/32
R865-19S-1	Sales and Use Taxes Distinguished Pursuant to Utah Code Ann. Title 59, Chapter 12	27063	AMD	6/29/2004	2004-9/27
R865-19S-7	Sales Tax License Pursuant to Utah Code Ann. Section 59-12-106	27226	AMD	9/14/2004	2004-13/48
R865-19S-12	Filing of Returns Pursuant to Utah Code Ann. Section 59-12-107	27064	AMD	6/29/2004	2004-9/28
R865-19S-23	Exemption Certificates Pursuant to Utah Code Ann. Sections 59-12-106 and 59-12-104	27068	AMD	6/29/2004	2004-9/30
R865-19S-28	Retailer Defined Pursuant to Utah Code Ann. Section 59-12-102	27071	AMD	6/29/2004	2004-9/31
R865-19S-30	Purchase Price or Sales Price Defined Pursuant to Utah Code Ann. Sections 59-12-102 and 59-12-104	27072	AMD	6/29/2004	2004-9/32
R865-19S-38	Isolated and Occasional Sales Pursuant to Utah Code Ann. Section 59-12-104	27383	AMD	10/19/2004	2004-18/62
R865-19S-45	Auctioneers, Consignees, Bailees, Etc. Pursuant to Utah Code Ann. Section 59-12-102	27095	AMD	6/29/2004	2004-9/34
R865-19S-49	Sales to and by Farmers and Other Agricultural Producers Pursuant to Utah Code Ann. Section 59-12-104	27384	AMD	10/19/2004	2004-18/63
R865-19S-58	Materials and Supplies Sold to Owners, Contractors, and Repairmen of Real Property Pursuant to Utah Code Ann. Sections 59-12-102 and 59-12-103	27080	AMD	6/29/2004	2004-9/37
R865-19S-70	Sales Incidental To The Rendition of Services Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104	27053	AMD	6/29/2004	2004-9/40

R865-19S-86	Monthly Payment of Sales Taxes Pursuant to Utah Code Ann. Section 59-12-108	27074	AMD	6/29/2004	2004-9/45
R865-19S-92	Computer Software and Other Related Transactions Pursuant to Utah Code Ann. Section 59-12-103	27085	AMD	6/29/2004	2004-9/47
R865-19S-98	Sales to Nonresidents of Vehicles, Off-Highway Vehicles, and Boats Required to be Registered, and Sales to Nonresidents of Boat Trailers and Outboard Motors Pursuant to Utah Code Ann. Section 59-12-104	27086	AMD	6/29/2004	2004-9/48
R865-19S-107	Reporting of Exempt Sales or Purchases Pursuant to Utah Code Ann. Section 59-12-105	27088	AMD	6/29/2004	2004-9/50
R865-19S-114	Items that Constitute Clothing Pursuant to Utah Code Ann. Section 59-12-102	27090	AMD	6/29/2004	2004-9/52
R865-19S-115	Items that Constitute Protective Equipment Pursuant to Utah Code Ann. Section 59-12-102	27091	AMD	6/29/2004	2004-9/53
R865-19S-116	Items that Constitute Sports or Recreational Equipment Pursuant to Utah Code Ann. Section 59-12-102	27097	AMD	6/29/2004	2004-9/54
R865-19S-117	Use of Rounding in Determining Sales and Use Tax Liability Pursuant to Utah Code Ann. Section 59-12-118	27096	AMD	6/29/2004	2004-9/54
R865-19S-118	Collection of Municipal Telecommunications License Tax Pursuant to Utah Code Ann. Section 10-1-405	27099	AMD	6/29/2004	2004-9/55
R865-19S-119	Certain Transactions Involving Food and Lodging Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104	27485	AMD	12/21/2004	2004-21/30
R865-21U-1	Nature of Tax Pursuant to Utah Code Ann. Section 59-12-103	27092	AMD	6/29/2004	2004-9/56
R865-21U-12	Storage Pursuant to Utah Code Ann. Section 59-12-103 and 59-12-104(34)	27078	AMD	6/29/2004	2004-9/58
<u>Property Tax</u>					
R884-24P-24	Form for Notice of Property Valuation and Tax Changes Pursuant to Utah Code Ann. Sections 59-2-918 through 59-2-924	26910	NSC	1/27/2004	Not Printed
R884-24P-24	Form for Notice of Property Valuation and Tax Changes Pursuant to Utah Code Ann. Sections 59-2-918 through 59-2-924	27190	AMD	8/2/2004	2004-12/66
R884-24P-24	Form for Notice of Property Valuation and Tax Changes Pursuant to Utah Code Ann. Sections 59-2-918 through 59-2-294	27382	AMD	10/19/2004	2004-18/64
R884-24P-33	2004 Personal Property Valuation Guides and Schedules Pursuant to Utah Code Ann. Section 59-2-301	27353	AMD	10/19/2004	2004-17/37
R884-24P-53	2004 Valuation Guides for Valuation of Land Subject to the Farmland Assessment Act Pursuant to Utah Code Ann. Section 59-2-515	27513	AMD	12/21/2004	2004-22/51
<u>Transportation Administration</u>					
R907-64	Longitudinal and Wireless Access to Interstate Highway Rights-of-Way for Installation of Telecommunications Facilities	26878	5YR	1/5/2004	2004-3/49
R907-65	Compensation Schedule for Longitudinal Access to Interstate Highway Rights-of-Way for Installation of Telecommunications Facilities	26879	5YR	1/5/2004	2004-3/50
R907-67	Suspension of Contractors from Work on Department Projects -- Reasons	26720	NEW	1/5/2004	2003-22/50
<u>Motor Carrier</u>					
R909-1	Adoption of Federal Regulations	26823	AMD	3/1/2004	2003-24/66
R909-3	Standards for Utah School Buses	26880	5YR	1/5/2004	2004-3/50
<u>Motor Carrier, Ports of Entry</u>					
R912-14	Changes in Utah's Oversize/Overweight Permit Program - Semitrailer Exceeding 48 Feet Length	26881	5YR	1/5/2004	2004-3/51
<u>Operations, Maintenance</u>					
R918-4	Using Volunteer Groups for the Adopt-a-Highway Program	27111	AMD	7/20/2004	2004-10/33
<u>Preconstruction</u>					
R930-3	Highway Noise Abatement	27156	AMD	7/20/2004	2004-11/84

Preconstruction, Right-of-Way Acquisition

R933-2-3	Definitions	26892	EMR	1/14/2004	2004-3/39
R933-2-3	Definitions	26893	AMD	3/23/2004	2004-3/37

**Workforce Services**

Employment Development

R986-100-104	Definitions of Terms Used in These Rules	27215	NSC	6/1/2004	Not Printed
R986-100-134	Payments of Assistance Pending the Hearing	26932	AMD	4/1/2004	2004-4/33
R986-200	Family Employment Program (FEP)	26704	AMD	2/2/2004	2003-21/77
R986-200	Family Employment Program	26934	AMD	4/1/2004	2004-4/35
R986-200-208	Good Cause for Not Cooperating with ORS	26997	NSC	5/1/2004	Not Printed
R986-500-501	Authority for Adoption Assistance (AA) and Other Applicable Rules	27491	AMD	1/1/2005	2004-21/31
R986-600	Workforce Investment Act	27393	AMD	11/1/2004	2004-18/66
R986-700	Child Care Assistance	26933	AMD	4/1/2004	2004-4/36
R986-700	Child Care Assistance	27138	AMD	7/1/2004	2004-10/34

Workforce Information and Payment Services

R994-102	Purpose of Employment Security Act	26921	AMD	4/4/2004	2004-4/38
R994-103	Approval of Counsel Fees	26922	REP	4/4/2004	2004-4/40
R994-104	Prosecution	26923	REP	4/4/2004	2004-4/41
R994-201	Definition of Terms in Employment Security Act	26928	AMD	4/4/2004	2004-4/42
R994-201-101	General Definitions and Acronyms	27470	AMD	11/16/2004	2004-20/39
R994-305	Collection of Contributions	27583	5YR	12/10/2004	2005-1/35
R994-305-801	Wage List Requirement	27237	AMD	8/3/2004	2004-13/49
R994-309	Nonprofit Organizations	27297	5YR	7/14/2004	2004-15/66
R994-310	Coverage	27300	5YR	7/14/2004	2004-15/66
R994-310	Coverage	27318	AMD	9/24/2004	2004-16/31
R994-311	Governmental Units	27298	5YR	7/14/2004	2004-15/67
R994-312	Employing Units Records - Confidential	27299	5YR	7/14/2004	2004-15/67
R994-401	Payment of Benefits	27469	R&R	11/16/2004	2004-20/40
R994-401-207	Retirement or Disability Retirement Income	27193	AMD	7/19/2004	2004-12/68
R994-403	Claim for Benefits	27471	R&R	11/16/2004	2004-20/47
R994-404	Wage Freeze Following Workers' Compensation	26930	R&R	4/4/2004	2004-4/43
R994-404-101	Payments Following Workers' Compensation	26996	NSC	5/1/2004	Not Printed
R994-404-101	Payments Following Workers' Compensation	27253	AMD	8/18/2004	2004-14/34
R994-405	Ineligibility for Benefits	27192	AMD	7/19/2004	2004-12/70
R994-405	Ineligibility for Benefits	27472	AMD	11/16/2004	2004-20/66
R994-406	Appeal Procedures	26924	AMD	4/4/2004	2004-4/45
R994-406-505	Overpayments Not Set Up (NSU)	27473	AMD	11/16/2004	2004-20/73
R994-508	Appeal Procedures	26929	R&R	4/4/2004	2004-4/51
R994-508	Appeal Procedures	26995	NSC	5/1/2004	Not Printed
R994-508-307	Withdrawal of Appeal to the Board	27133	NSC	7/1/2004	Not Printed

**RULES INDEX - BY KEYWORD (SUBJECT)**

Rules made effective January 2, 2004, through January 1, 2005

**ABBREVIATIONS**

AMD = Amendment	NSC = Nonsubstantive rule change
CPR = Change in Proposed Rule	REP = Repeal
EMR = Emergency rule (120-day)	R&R = Repeal and reenact
NEW = New rule	5YR = Five-Year Review
EXD = Expired	EXT = Extension

<b>KEYWORD</b> AGENCY ISSUE/PAGE	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN
<b><u>ABORTION</u></b> Health; Health Care Financing, Coverage and Reimbursement Policy	27222	R414-1B	EMR	6/9/2004	2004-13/64
	27227	R414-1B	NEW	10/6/2004 see CPR in 09/01/2004 Bulletin	2004-13/4
	27227	R414-1B	CPR	10/6/2004	2004-17/48
<b><u>ABSENTEE VOTING</u></b> Lieutenant Governor; Elections	27406	R623-4	EMR	9/10/2004	2004-19/45
<b><u>ACCELERATED LEARNING</u></b> Education; Administration	26962	R277-712	5YR	2/26/2004	2004-6/60
<b><u>ACCEPTABLE USE</u></b> Governor; Planning and Budget, Chief Information Officer	27119	R365-7	NEW	6/28/2004	2004-10/20
<b><u>ACCESS TO INFORMATION</u></b> Administrative Services; Administration	27495	R13-2	AMD	12/21/2004	2004-21/5
<b><u>ACCOUNTANTS</u></b> Commerce; Occupational and Professional Licensing	26786 27019	R156-26a-303b R156-26a-303b	AMD AMD	1/6/2004 5/24/2004	2003-23/7 2004-8/32
<b><u>ACCREDITATION</u></b> Education; Administration	26959 27410	R277-413 R277-504	5YR 5YR	2/26/2004 9/7/2004	2004-6/58 2004-19/50
<b><u>ACID RAIN</u></b> Environmental Quality; Air Quality	26941	R307-417	5YR	2/9/2004	2004-5/45
<b><u>ADA COMPLAINT PROCEDURES</u></b> Crime Victim Reparations; Administration	27460	R270-3	5YR	9/30/2004	2004-20/75
<b><u>ADMINISTRATIVE LAW</u></b> Human Services; Recovery Services	27376 27007	R527-200-10 R527-258	AMD AMD	10/18/2004 5/19/2004	2004-18/26 2004-8/72
<b><u>ADMINISTRATIVE PROCEDURES</u></b> Community and Economic Development; Community Development, History	27359	R212-4	AMD	11/23/2004	2004-18/15
Education; Administration	26958	R277-102	5YR	2/26/2004	2004-6/58
Education; Rehabilitation	27342	R280-150	5YR	8/10/2004	2004-17/56
Human Resource Management; Administration	27162	R477-3	AMD	7/2/2004	2004-11/32
	27175	R477-15	NSC	7/1/2004	Not Printed
Human Services; Administration, Administrative Hearings	27254	R497-100	NSC	7/1/2004	Not Printed
Labor Commission; Adjudication	26772	R602-1	AMD	1/2/2004	2003-23/46
	26773	R602-2-1	AMD	1/2/2004	2003-23/47
	27492	R602-2-4	AMD	12/2/2004	2004-21/17
Natural Resources; Forestry, Fire and State Lands	27070	R652-41-1300	AMD	6/4/2004	2004-9/17
School and Institutional Trust Lands; Administration	27598	R850-10	5YR	12/22/2004	2005-2/170
	27178	R850-70	AMD	7/2/2004	2004-11/80
	27347	R850-80	AMD	10/4/2004	2004-17/32
<b><u>ADMINISTRATIVE PROCEEDINGS</u></b> Commerce; Occupational and Professional Licensing	27401	R156-46b	AMD	11/2/2004	2004-19/6
Public Safety; Driver License	27361	R708-22	5YR	8/25/2004	2004-18/84
<b><u>ADMINISTRATIVE RESPONSIBILITY</u></b> Human Resource Management; Administration	27161	R477-2	AMD	7/2/2004	2004-11/29
<b><u>ADMINISTRATIVE RULES</u></b> Human Resource Management; Administration	27170	R477-12	AMD	7/2/2004	2004-11/57

COMPLETE 2004 RULES INDEX

**ADOPT-A-HIGHWAY**

Transportation; Operations, Maintenance 27111 R918-4 AMD 7/20/2004 2004-10/33

**ADOPTION**

Human Services; Child and Family Services 27375 R512-41 5YR 8/27/2004 2004-18/83

**ADOPTION ASSISTANCE**

Workforce Services; Employment Development 27491 R986-500-501 AMD 1/1/2005 2004-21/31

**ADULT EDUCATION**

Education; Administration 26963 R277-734 5YR 2/26/2004 2004-6/60  
27001 R277-734 REP 5/5/2004 2004-7/11

**ADVERTISING**

Commerce; Consumer Protection 26945 R152-11 AMD 5/20/2004 2004-5/3

**AIR POLLUTION**

Environmental Quality; Air Quality 26896 R307-110-12 AMD 5/18/2004 see 2004-3/12  
CPR in  
04/15/2004  
Bulletin  
26896 R307-110-12 CPR 5/18/2004 2004-8/87  
26983 R307-110-12 NSC 5/18/2004 Not Printed  
27295 R307-110-12 AMD 12/2/2004 see 2004-15/23  
CPR in  
11/01/2004  
Bulletin  
27295 R307-110-12 CPR 12/2/2004 2004-21/34  
26946 R307-110-28 AMD 6/8/2004 2004-5/9  
26898 R307-110-31 AMD 5/18/2004 see 2004-3/13  
CPR in  
04/15/2004  
Bulletin  
26898 R307-110-31 CPR 5/18/2004 2004-8/87  
27296 R307-110-33 AMD 10/7/2004 2004-15/24  
26899 R307-110-34 AMD 5/18/2004 see 2004-3/14  
CPR in  
04/15/2004  
Bulletin  
26899 R307-110-34 CPR 5/18/2004 2004-8/88  
27344 R307-110-35 AMD 11/4/2004 2004-17/13  
26942 R307-150 5YR 2/9/2004 2004-5/43  
26887 R307-214 EXT 2/9/2004 see Not Printed  
5YR DAR No.  
26939  
26939 R307-214 5YR 2/9/2004 2004-5/44  
27293 R307-214-2 AMD 10/7/2004 2004-15/28  
27220 R307-215 5YR 6/8/2004 2004-13/68  
26897 R307-301 AMD 5/18/2004 2004-3/15  
27106 R307-309 EXT 6/8/2004 see Not Printed  
5YR DAR No.  
27217  
27217 R307-309 5YR 6/8/2004 2004-13/68  
27487 R307-326-7 NSC 12/1/2004 Not Printed  
27144 R307-343 EXT 6/8/2004 see Not Printed  
5YR DAR No.  
27219  
27219 R307-343 5YR 6/8/2004 2004-13/69  
26940 R307-415 5YR 2/9/2004 2004-5/45  
26947 R307-415-6c AMD 8/3/2004 see 2004-5/10  
CPR in  
07/01/2004  
Bulletin  
26947 R307-415-6c CPR 8/3/2004 2004-13/52

	27107	R307-420	EXT	6/8/2004 see 5YR DAR No. 27218	Not Printed
	27218	R307-420	5YR	6/8/2004	2004-13/69
<b><u>AIR QUALITY</u></b>					
Environmental Quality; Air Quality	26941	R307-417	5YR	2/9/2004	2004-5/45
<b><u>AIR TRAVEL</u></b>					
Administrative Services; Finance	27120	R25-7	AMD	7/1/2004	2004-10/4
	27164	R25-7-6	AMD	7/2/2004	2004-11/4
<b><u>ALARM COMPANY</u></b>					
Commerce; Occupational and Professional Licensing	27188	R156-55d-302f	AMD	10/5/2004 see CPR in 09/01/2004 Bulletin	2004-12/4
	27188	R156-55d-302f	CPR	10/5/2004	2004-17/47
<b><u>ALCOHOLIC BEVERAGES</u></b>					
Alcoholic Beverage Control; Administration	27025	R81-1-3	AMD	6/1/2004	2004-8/4
	27027	R81-1-8	AMD	6/1/2004	2004-8/5
	27028	R81-1-21	AMD	6/1/2004	2004-8/6
	27105	R81-1-21	NSC	6/1/2004	Not Printed
	27145	R81-1-21	NSC	6/1/2004	Not Printed
	27029	R81-1-22	AMD	6/1/2004	2004-8/8
	27030	R81-1-23	AMD	6/1/2004	2004-8/10
	27031	R81-2-1	AMD	6/1/2004	2004-8/11
	27032	R81-2-2	AMD	6/1/2004	2004-8/12
	27033	R81-2-7	AMD	6/1/2004	2004-8/14
	27034	R81-2-8	AMD	6/1/2004	2004-8/14
	27035	R81-2-9	AMD	6/1/2004	2004-8/16
	27201	R81-2-9	AMD	8/2/2004	2004-12/3
	27036	R81-2-10	AMD	6/1/2004	2004-8/17
	27037	R81-2-11	AMD	6/1/2004	2004-8/18
	27038	R81-3-5	AMD	6/1/2004	2004-8/19
	27039	R81-3-6	AMD	6/1/2004	2004-8/20
	27040	R81-3-14	AMD	6/1/2004	2004-8/22
	27041	R81-3-16	AMD	6/1/2004	2004-8/23
	27042	R81-3-17	AMD	6/1/2004	2004-8/24
	27043	R81-3-18	AMD	6/1/2004	2004-8/25
	27044	R81-3-19	AMD	6/1/2004	2004-8/26
	27104	R81-3-19	NSC	6/1/2004	Not Printed
	27146	R81-3-19	NSC	6/1/2004	Not Printed
	27045	R81-4D-13	AMD	6/1/2004	2004-8/27
	27046	R81-6-6	AMD	6/1/2004	2004-8/29
	27047	R81-8-2	AMD	6/1/2004	2004-8/30
	27048	R81-8-3	AMD	6/1/2004	2004-8/31
<b><u>ALTERNATIVE DISPUTE RESOLUTION</u></b>					
Commerce; Occupational and Professional Licensing	26915	R156-39a	5YR	1/27/2004	2004-4/75
<b><u>ALTERNATIVE LICENSING</u></b>					
Education; Administration	27270	R277-503	AMD	8/17/2004	2004-14/6
	27357	R277-503	NSC	9/1/2004	Not Printed
<b><u>ANIMALS</u></b>					
Health; Epidemiology and Laboratory Services, Laboratory Services	26968	R438-13	5YR	2/27/2004	2004-6/61
<b><u>ANNUITIES</u></b>					
Insurance; Administration	27083	R590-230	NEW	6/3/2004	2004-9/14
	27339	R590-230-5	NSC	9/1/2004	Not Printed

**ANNUITY DISCLOSURE**

Insurance; Administration	27082	R590-229	NEW	10/7/2004 see CPR (First) in 07/01/2004 Bulletin	2004-9/12
	27082	R590-229	CPR	10/7/2004 see CPR (Second) in 09/01/2004 Bulletin	2004-13/60
	27082	R590-229	CPR	10/7/2004	2004-17/53

**ANNUITY INSURANCE FILINGS**

Insurance; Administration	26952	R590-227	NEW	4/8/2004	2004-5/20
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**APPELLATE PROCEDURES**

Administrative Services; Fleet Operations, Surplus Property	26843	R28-3	AMD	2/12/2004	2004-1/4
Workforce Services; Workforce Information and Payment Services	26924	R994-406	AMD	4/4/2004	2004-4/45
	26929	R994-508	R&R	4/4/2004	2004-4/51
	26995	R994-508	NSC	5/1/2004	Not Printed
	27133	R994-508-307	NSC	7/1/2004	Not Printed

**APPLIED TECHNOLOGY EDUCATION**

Education; Administration	27000	R277-518	AMD	5/5/2004	2004-7/8
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**APPRAISALS**

Tax Commission; Property Tax	26910	R884-24P-24	NSC	1/27/2004	Not Printed
	27190	R884-24P-24	AMD	8/2/2004	2004-12/66
	27382	R884-24P-24	AMD	10/19/2004	2004-18/64
	27353	R884-24P-33	AMD	10/19/2004	2004-17/37
	27513	R884-24P-53	AMD	12/21/2004	2004-22/51

**ARBITRATION**

Commerce; Occupational and Professional Licensing	26915	R156-39a	5YR	1/27/2004	2004-4/75
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**ARCHAEOLOGICAL RESOURCES**

Regents (Board Of); University of Utah, Museum of Natural History (Utah)	26913	R807-1	5YR	1/26/2004	2004-4/77
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**ARCHAEOLOGY**

Community and Economic Development; Community Development, History	27359	R212-4	AMD	11/23/2004	2004-18/15
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**ARCHITECTS**

Administrative Services; Facilities Construction and Management	27608	R23-2	5YR	12/23/2004	2005-2/168
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**ARTS**

Education; Administration	26979	R277-444	AMD	4/15/2004	2004-6/4
	27271	R277-444	AMD	8/17/2004	2004-14/4

**ASSIGNMENT**

Education; Administration	26851	R277-520	R&R	2/5/2004	2004-1/20
	27210	R277-520	AMD	7/16/2004	2004-12/21

**ASSISTED LIVING FACILITIES**

Public Safety; Fire Marshal	27433	R710-3	AMD	11/16/2004	2004-20/35
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**ATHLETICS**

Education; Administration	26852	R277-517	AMD	2/5/2004	2004-1/18
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**AUTOMATIC FIRE SPRINKLERS**

Public Safety; Fire Marshal	26900	R710-5	AMD	3/3/2004	2004-3/32
	27326	R710-5	AMD	9/15/2004	2004-16/27

<b><u>BACKFLOW ASSEMBLY TESTER</u></b>					
Environmental Quality; Drinking Water	27252	R309-302 (Changed to R309-305)	AMD	10/15/2004	2004-14/10
<b><u>BAIT AND SWITCH</u></b>					
Commerce; Consumer Protection	26945	R152-11	AMD	5/20/2004	2004-5/3
<b><u>BALLOTS</u></b>					
Lieutenant Governor; Elections	27123	R623-2	NEW	6/16/2004	2004-10/24
<b><u>BARRIER</u></b>					
Transportation; Preconstruction	27156	R930-3	AMD	7/20/2004	2004-11/84
<b><u>BEAR</u></b>					
Natural Resources; Wildlife Resources	26867	R657-33	AMD	2/24/2004	2004-2/3
<b><u>BED ALLOCATIONS</u></b>					
Human Services; Mental Health	27258	R523-1	NSC	7/1/2004	Not Printed
	27117	R523-1-10	AMD	6/17/2004	2004-10/21
	27118	R523-1-16	AMD	6/17/2004	2004-10/23
	27257	R523-1-22	AMD	8/17/2004	2004-14/25
<b><u>BENEFITS</u></b>					
Workforce Services; Workforce Information and Payment Services	27469	R994-401	R&R	11/16/2004	2004-20/40
	27193	R994-401-207	AMD	7/19/2004	2004-12/68
<b><u>BICYCLES</u></b>					
Regents (Board Of); University of Utah, Administration	26914	R805-1	5YR	1/27/2004	2004-4/76
<b><u>BIG GAME SEASONS</u></b>					
Natural Resources; Wildlife Resources	26817	R657-5	AMD	1/21/2004	2003-24/46
	27159	R657-5	AMD	7/2/2004	2004-11/74
<b><u>BIRDS</u></b>					
Natural Resources; Wildlife Resources	27283	R657-6	AMD	9/1/2004	2004-15/55
	27367	R657-9	AMD	10/19/2004	2004-18/47
	27346	R657-46	EXT	10/19/2004	Not Printed
				see 5YR DAR No. 27500	
	27500	R657-46	5YR	10/19/2004	2004-22/70
<b><u>BIRTH DEFECT REPORTING</u></b>					
Health; Community and Family Health Services, Children with Special Health Care Needs	27444	R398-5	5YR	9/22/2004	2004-20/76
<b><u>BIRTH DEFECTS</u></b>					
Health; Community and Family Health Services, Children with Special Health Care Needs	27444	R398-5	5YR	9/22/2004	2004-20/76
<b><u>BOILERS</u></b>					
Labor Commission; Safety	26967	R616-2-3	AMD	4/15/2004	2004-6/55
<b><u>BOXING</u></b>					
Commerce; Administration	27312	R151-33	AMD	9/15/2004	2004-16/8
<b><u>BREAKS</u></b>					
Human Resource Management; Administration	27167	R477-8	AMD	7/2/2004	2004-11/50
	27273	R477-8-6	NSC	7/2/2004	Not Printed
<b><u>BUDGETING</u></b>					
Health; Health Care Financing, Coverage and Reimbursement Policy	27232	R414-304	AMD	8/26/2004	2004-13/14
	27379	R414-304	AMD	10/16/2004	2004-18/21

**BUILDING CODES**

Commerce; Occupational and Professional Licensing	27101	R156-56	AMD	8/17/2004 see CPR in 07/15/2004 Bulletin	2004-9/5
	27101	R156-56	CPR	8/17/2004	2004-14/37
	27489	R156-56	AMD	1/1/2005	2004-21/6
	27474	R156-56-704	NSC	12/1/2004	Not Printed
	27490	R156-56-704	AMD	1/1/2005	2004-21/11

**BUILDING INSPECTION**

Commerce; Occupational and Professional Licensing	27101	R156-56	AMD	8/17/2004 see CPR in 07/15/2004 Bulletin	2004-9/5
	27101	R156-56	CPR	8/17/2004	2004-14/37
	27489	R156-56	AMD	1/1/2005	2004-21/6
	27474	R156-56-704	NSC	12/1/2004	Not Printed
	27490	R156-56-704	AMD	1/1/2005	2004-21/11

**BUILDINGS**

Administrative Services; Facilities Construction and Management	26991	R23-29	5YR	3/10/2004	2004-7/35
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**BURGLAR ALARMS**

Commerce; Occupational and Professional Licensing	27188	R156-55d-302f	AMD	10/5/2004 see CPR in 09/01/2004 Bulletin	2004-12/4
	27188	R156-55d-302f	CPR	10/5/2004	2004-17/47

**BUSES**

Education; Administration	26961	R277-601	5YR	2/26/2004	2004-6/59
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**CANCER**

Health; Community and Family Health Services, Chronic Disease	27235	R384-100	5YR	6/15/2004	2004-13/70
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**CERTIFICATION**

Education; Rehabilitation	27532	R280-203	5YR	11/5/2004	2004-23/57
Labor Commission; Safety	26967	R616-2-3	AMD	4/15/2004	2004-6/55
	26966	R616-3-3	AMD	4/15/2004	2004-6/56

**CERTIFICATION OF INSTRUCTORS**

Human Services; Substance Abuse	27511	R544-4 (Changed to R523-22)	NSC	12/1/2004	Not Printed
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**CERTIFIED NURSE MIDWIFE**

Commerce; Occupational and Professional Licensing	27224	R156-44a	5YR	6/10/2004	2004-13/66
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**CHARITIES**

Tax Commission; Auditing	27063	R865-19S-1	AMD	6/29/2004	2004-9/27
	27226	R865-19S-7	AMD	9/14/2004	2004-13/48
	27064	R865-19S-12	AMD	6/29/2004	2004-9/28
	27068	R865-19S-23	AMD	6/29/2004	2004-9/30
	27071	R865-19S-28	AMD	6/29/2004	2004-9/31
	27072	R865-19S-30	AMD	6/29/2004	2004-9/32
	27383	R865-19S-38	AMD	10/19/2004	2004-18/62
	27095	R865-19S-45	AMD	6/29/2004	2004-9/34
	27384	R865-19S-49	AMD	10/19/2004	2004-18/63
	27080	R865-19S-58	AMD	6/29/2004	2004-9/37
	27053	R865-19S-70	AMD	6/29/2004	2004-9/40
	27074	R865-19S-86	AMD	6/29/2004	2004-9/45
	27085	R865-19S-92	AMD	6/29/2004	2004-9/47
	27086	R865-19S-98	AMD	6/29/2004	2004-9/48
	27088	R865-19S-107	AMD	6/29/2004	2004-9/50
	27090	R865-19S-114	AMD	6/29/2004	2004-9/52

	27091	R865-19S-115	AMD	6/29/2004	2004-9/53
	27097	R865-19S-116	AMD	6/29/2004	2004-9/54
	27096	R865-19S-117	AMD	6/29/2004	2004-9/54
	27099	R865-19S-118	AMD	6/29/2004	2004-9/55
	27485	R865-19S-119	AMD	12/21/2004	2004-21/30
<b><u>CHILD CARE</u></b>					
Workforce Services; Employment Development	26933	R986-700	AMD	4/1/2004	2004-4/36
	27138	R986-700	AMD	7/1/2004	2004-10/34
<b><u>CHILD CARE FACILITIES</u></b>					
Health; Health Systems Improvement, Child Care Licensing	26824	R430-2	AMD	4/12/2004	2003-24/25
	27242	R430-8	5YR	6/16/2004	2004-14/57
	27244	R430-100	AMD	8/27/2004	2004-14/15
<b><u>CHILD PLACING</u></b>					
Human Services; Administration, Administrative Services, Licensing	26904	R501-7	AMD	5/28/2004	2004-4/22
	27229	R501-7	AMD	8/5/2004	2004-13/28
	27415	R501-7	NSC	10/1/2004	Not Printed
<b><u>CHILD SUPPORT</u></b>					
Human Services; Administration	26822	R495-879	AMD	1/26/2004	2003-24/27
Human Services; Recovery Services	27223	R527-38	NEW	8/5/2004	2004-13/34
	27376	R527-200-10	AMD	10/18/2004	2004-18/26
	27434	R527-201	AMD	11/30/2004	2004-20/15
	26889	R527-210	5YR	1/13/2004	2004-3/48
	27006	R527-231	AMD	5/19/2004	2004-8/71
	27007	R527-258	AMD	5/19/2004	2004-8/72
	27391	R527-300	AMD	11/30/2004	2004-18/27
	27109	R527-302	5YR	4/21/2004	2004-10/38
	27182	R527-475	AMD	7/21/2004	2004-12/59
<b><u>CHILD WELFARE</u></b>					
Human Services; Child and Family Services	27259	R512-32	NSC	7/1/2004	Not Printed
	27375	R512-41	5YR	8/27/2004	2004-18/83
	27274	R512-302-4	AMD	9/9/2004	2004-15/50
<b><u>CHILD WELFARE POLICY</u></b>					
Human Services; Child and Family Services	26774	R512-3	EXT	3/4/2004 see EXD DAR No. 27014	Not Printed
	27014	R512-3	EXD	3/4/2004	Not Printed
<b><u>CHILDREN'S HEALTH BENEFITS</u></b>					
Health; Children's Health Insurance Program	26757	R382-10	AMD	1/5/2004	2003-22/21
	27050	R382-10	AMD	6/1/2004	2004-8/58
<b><u>CHIROPRACTIC PHYSICIAN</u></b>					
Commerce; Occupational and Professional Licensing	27355	R156-73	AMD	10/18/2004	2004-18/13
<b><u>CHIROPRACTIC SERVICES</u></b>					
Health; Health Care Financing, Coverage and Reimbursement Policy	26809	R414-99	NEW	2/17/2004	2003-24/15
<b><u>CHIROPRACTORS</u></b>					
Commerce; Occupational and Professional Licensing	27355	R156-73	AMD	10/18/2004	2004-18/13
<b><u>CLASSIFIED LICENSE</u></b>					
Public Safety; Driver License	27051	R708-10	NSC	6/1/2004	Not Printed
	27360	R708-10	5YR	8/25/2004	2004-18/84
<b><u>COACHING CERTIFICATION</u></b>					
Education; Administration	26852	R277-517	AMD	2/5/2004	2004-1/18
<b><u>COAL MINES</u></b>					
Natural Resources; Oil, Gas and Mining; Coal	26710	R645-301-100	AMD	2/6/2004	2003-22/34
	26711	R645-301-500	AMD	2/6/2004	2003-22/35

COMPLETE 2004 RULES INDEX

	26712	R645-303-200	AMD	2/6/2004	2003-22/36
	26713	R645-401	AMD	2/6/2004	2003-22/38
<b><u>COATINGS</u></b>					
Environmental Quality; Air Quality	27144	R307-343	EXT	6/8/2004 see 5YR DAR No. 27219	Not Printed
	27219	R307-343	5YR	6/8/2004	2004-13/69
<b><u>COLLECTIONS</u></b>					
Tax Commission; Auditing	27056	R865-12L-7	AMD	6/29/2004	2004-9/20
	27060	R865-12L-15	AMD	6/29/2004	2004-9/24
	27061	R865-12L-16	AMD	6/29/2004	2004-9/25
	27062	R865-12L-17	AMD	6/29/2004	2004-9/26
<b><u>COLLEGES</u></b>					
Public Safety; Administration	26969	R698-4	5YR	2/27/2004	2004-6/62
<b><u>COMMUNICABLE DISEASES</u></b>					
Health; Epidemiology and Laboratory Services, Epidemiology	27024	R386-702	AMD	6/11/2004	2004-8/60
<b><u>COMPLAINTS</u></b>					
Education; Rehabilitation	26872	R280-201	5YR	1/5/2004	2004-3/43
<b><u>COMPULSORY EDUCATION</u></b>					
Education; Administration	27531	R277-607	5YR	11/5/2004	2004-23/57
<b><u>CONDUCT</u></b>					
Commerce; Real Estate	27098	R162-106-8	AMD	7/28/2004	2004-9/11
	27128	R162-107	AMD	9/10/2004	2004-10/13
<b><u>CONFIDENTIALITY OF INFORMATION</u></b>					
Administrative Services; Administration	27495	R13-2	AMD	12/21/2004	2004-21/5
Human Resource Management; Administration	27161	R477-2	AMD	7/2/2004	2004-11/29
Workforce Services; Workforce Information and Payment Services	27299	R994-312	5YR	7/14/2004	2004-15/67
<b><u>CONFLICT OF INTEREST</u></b>					
Human Resource Management; Administration	27168	R477-9	AMD	7/2/2004	2004-11/53
<b><u>CONSUMER PROTECTION</u></b>					
Commerce; Consumer Protection	26945	R152-11	AMD	5/20/2004	2004-5/3
	27238	R152-21	5YR	6/15/2004	2004-13/66
<b><u>CONTESTS</u></b>					
Commerce; Administration	27312	R151-33	AMD	9/15/2004	2004-16/8
<b><u>CONTINUING EDUCATION</u></b>					
Commerce; Real Estate	27335	R162-9	AMD	10/21/2004	2004-17/4
<b><u>CONTINUING PROFESSIONAL EDUCATION</u></b>					
Commerce; Occupational and Professional Licensing	26786	R156-26a-303b	AMD	1/6/2004	2003-23/7
	27019	R156-26a-303b	AMD	5/24/2004	2004-8/32
<b><u>CONTRACTORS</u></b>					
Commerce; Occupational and Professional Licensing	26834	R156-38	AMD	2/3/2004	2004-1/5
	27020	R156-38	AMD	7/26/2004 see CPR in 06/15/2004 Bulletin	2004-8/39
	27020	R156-38	CPR	7/26/2004	2004-12/73
	27441	R156-55a-301	NSC	10/1/2004	Not Printed
	27112	R156-55b	AMD	6/15/2004	2004-10/6
	27394	R156-55b-302c	NSC	12/1/2004	Not Printed

	27101	R156-56	AMD	8/17/2004 see CPR in 07/15/2004 Bulletin	2004-9/5
	27101	R156-56	CPR	8/17/2004	2004-14/37
	27489	R156-56	AMD	1/1/2005	2004-21/6
	27474	R156-56-704	NSC	12/1/2004	Not Printed
	27490	R156-56-704	AMD	1/1/2005	2004-21/11
Transportation; Administration	26720	R907-67	NEW	1/5/2004	2003-22/50
<b><u>CONTRACTS</u></b>					
Public Service Commission; Administration	27585	R746-401	5YR	12/13/2004	2005-1/35
<b><u>CONTROLLED SUBSTANCES</u></b>					
Commerce; Occupational and Professional Licensing	26916	R156-37c	5YR	1/27/2004	2004-4/74
<b><u>CORRECTIONS</u></b>					
Corrections; Administration	26769	R251-101	REP	3/24/2004	2003-23/15
<b><u>COUGAR</u></b>					
Natural Resources; Wildlife Resources	27368	R657-10	AMD	10/19/2004	2004-18/49
<b><u>COUNSELORS</u></b>					
Education; Administration	26850	R277-462	AMD	2/5/2004	2004-1/16
	27408	R277-462	5YR	9/7/2004	2004-19/49
Workforce Services; Workforce Information and Payment Services	26922	R994-103	REP	4/4/2004	2004-4/40
<b><u>COUNTY JAILS</u></b>					
Corrections; Administration	27416	R251-113	AMD	11/9/2004	2004-19/28
<b><u>COURT REPORTING</u></b>					
Commerce; Occupational and Professional Licensing	26927	R156-74	5YR	2/2/2004	2004-4/75
<b><u>COVERAGE</u></b>					
Workforce Services; Workforce Information and Payment Services	27300	R994-310	5YR	7/14/2004	2004-15/66
	27318	R994-310	AMD	9/24/2004	2004-16/31
<b><u>COVERAGE GROUPS</u></b>					
Health; Health Care Financing, Coverage and Reimbursement Policy	27230	R414-303	AMD	8/26/2004	2004-13/7
	27378	R414-303	AMD	10/16/2004	2004-18/18
<b><u>COVERED-AT-WORK</u></b>					
Health; Health Care Financing, Coverage and Reimbursement Policy	27515	R414-310	AMD	12/16/2004	2004-22/18
<b><u>COVERED-AT-WORK BENEFITS</u></b>					
Health; Health Care Financing, Coverage and Reimbursement Policy	26811	R414-300	NEW	2/10/2004	2003-24/17
<b><u>CREDIT ENHANCEMENTS</u></b>					
Environmental Quality; Drinking Water	26974	R309-700	AMD	8/6/2004 see CPR in 07/01/2004 Bulletin	2004-6/31
	26974	R309-700	CPR	8/6/2004	2004-13/53
<b><u>CREDIT INSURANCE FILINGS</u></b>					
Insurance; Administration	26950	R590-228	NEW	4/8/2004	2004-5/25
<b><u>CREDIT REPORTING</u></b>					
Commerce; Consumer Protection	27238	R152-21	5YR	6/15/2004	2004-13/66
<b><u>CREDIT SERVICES</u></b>					
Commerce; Consumer Protection	27238	R152-21	5YR	6/15/2004	2004-13/66

**CRIMINAL RECORDS**

Public Safety; Criminal Investigations and Technical Services, Criminal Identification	26858	R722-900	EXT	1/15/2004 see 5YR DAR No. 26895	Not Printed
	26895	R722-900	5YR	1/15/2004	2004-3/48

**CROSS CONNECTION CONTROL**

Environmental Quality; Drinking Water	27252	R309-302 (Changed to R309-305)	AMD	10/15/2004	2004-14/10
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**CURATION**

Regents (Board Of); University of Utah, Museum of Natural History (Utah)	26913	R807-1	5YR	1/26/2004	2004-4/77
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**CURRICULA**

Education; Administration	26979	R277-444	AMD	4/15/2004	2004-6/4
	27271	R277-444	AMD	8/17/2004	2004-14/4
	26902	R277-700	AMD	3/3/2004	2004-3/10
	26985	R277-700	NSC	4/1/2004	Not Printed

**CUSTODY**

Education; Administration	26870	R277-735	5YR	1/5/2004	2004-3/43
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**CUSTODY OF CHILDREN**

Human Services; Administration	26822	R495-879	AMD	1/26/2004	2003-24/27
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**DAY CARE**

Public Safety; Fire Marshal	27436	R710-8	AMD	11/16/2004	2004-20/38
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**DEFINITIONS**

Commerce; Real Estate	27132	R162-101-2	AMD	9/10/2004	2004-10/10
Environmental Quality; Drinking Water	26970	R309-110	AMD	4/21/2004	2004-6/13
Human Resource Management; Administration	27160	R477-1	AMD	7/2/2004	2004-11/23
	27170	R477-12	AMD	7/2/2004	2004-11/57
Workforce Services; Workforce Information and Payment Services	26928	R994-201	AMD	4/4/2004	2004-4/42
	27470	R994-201-101	AMD	11/16/2004	2004-20/39

**DELEGATION**

Administrative Services; Facilities Construction and Management	26991	R23-29	5YR	3/10/2004	2004-7/35
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**DEMONSTRATION**

Health; Health Care Financing, Coverage and Reimbursement Policy	26810	R414-310	AMD	2/10/2004	2003-24/18
	27515	R414-310	AMD	12/16/2004	2004-22/18

**DENTAL**

Health; Health Care Financing, Coverage and Reimbursement Policy	26782	R414-51	AMD	1/28/2004	2003-23/25
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**DESIGN**

Administrative Services; Facilities Construction and Management	27313	R23-3	5YR	7/28/2004	2004-16/33
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**DEVELOPMENTALLY DISABLED**

Tax Commission; Administration	27268	R861-1A-16	NSC	7/1/2004	Not Printed
	27155	R861-1A-37	AMD	8/2/2004	2004-11/83
	27354	R861-1A-37	AMD	10/19/2004	2004-17/36
	27236	R861-1A-38	AMD	9/14/2004	2004-13/47

**DIETARY PRODUCTS INSURANCE**

Insurance; Administration	27536	R590-194	5YR	11/9/2004	2004-23/60
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**DISABILITY**

Human Services; Services for People with Disabilities	27233	R539-1	AMD	8/19/2004	2004-13/35
	27356	R539-1	NSC	11/1/2004	Not Printed

**DISABLED PERSONS**

Education; Rehabilitation	26872	R280-201	5YR	1/5/2004	2004-3/43
	26873	R280-202	5YR	1/5/2004	2004-3/44

**DISCHARGE PERMITS**

Environmental Quality; Water Quality	26903	R317-8	AMD	3/30/2004	2004-3/19
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**DISCIPLINARY ACTIONS**

Education; Administration	26981	R277-514	AMD	4/15/2004	2004-6/10
	27340	R277-609	5YR	8/10/2004	2004-17/55
Professional Practices Advisory Commission; Administration	27141	R686-103	5YR	5/5/2004	2004-11/91
	27310	R686-103	AMD	9/2/2004	2004-15/58

**DISCIPLINE OF EMPLOYEES**

Human Resource Management; Administration	27169	R477-11	AMD	7/2/2004	2004-11/56
	27174	R477-14	NSC	6/1/2004	Not Printed

**DISCLOSURE REQUIREMENTS**

Tax Commission; Administration	27268	R861-1A-16	NSC	7/1/2004	Not Printed
	27155	R861-1A-37	AMD	8/2/2004	2004-11/83
	27354	R861-1A-37	AMD	10/19/2004	2004-17/36
	27236	R861-1A-38	AMD	9/14/2004	2004-13/47

**DISEASE CONTROL**

Agriculture and Food; Animal Industry	26891	R58-21	AMD	3/4/2004	2004-3/4
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**DISMISSAL OF EMPLOYEES**

Human Resource Management; Administration	27169	R477-11	AMD	7/2/2004	2004-11/56
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**DISSEMINATION OF INFORMATION**

Education; Administration	27412	R277-714	5YR	9/7/2004	2004-19/51
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**DIVERSION PROGRAMS**

Commerce; Occupational and Professional Licensing	27358	R156-1	EMR	8/24/2004	2004-18/79
	27377	R156-1	AMD	10/18/2004	2004-18/4
	26805	R156-1-106	AMD	1/20/2004	2003-24/4
	27103	R156-1-302	NSC	6/1/2004	Not Printed
Human Services; Youth Corrections	27261	R547-1	NSC	7/1/2004	Not Printed

**DOGS**

Natural Resources; Wildlife Resources	27346	R657-46	EXT	10/19/2004 see 5YR DAR No. 27500	Not Printed
	27500	R657-46	5YR	10/19/2004	2004-22/70

**DOMESTIC VIOLENCE POLICY**

Human Services; Child and Family Services	26774	R512-3	EXT	3/4/2004 see EXD DAR No. 27014	Not Printed
	27014	R512-3	EXD	3/4/2004	Not Printed

**DRINKING WATER**

Environmental Quality; Drinking Water	26970	R309-110	AMD	4/21/2004	2004-6/13
	26971	R309-204 (Changed to R309-515)	AMD	4/21/2004	2004-6/23
	27252	R309-302 (Changed to R309-305)	AMD	10/15/2004	2004-14/10
	26988	R309-605	NSC	5/1/2004	Not Printed

**DRIP IRRIGATION**

Environmental Quality; Water Quality	26797	R317-401	NEW	7/2/2004 see CPR in 04/15/2004 Bulletin	2003-23/21
	26797	R317-401	CPR	7/2/2004	2004-8/89

**DRIVER EDUCATION**

Education; Administration	27423	R277-746	AMD	11/2/2004	2004-19/32
Public Safety; Driver License	26894	R708-2	AMD	3/4/2004	2004-3/27
	27245	R708-2	EMR	7/1/2004	2004-14/52
	27246	R708-2	AMD	8/17/2004	2004-14/27

**DROPOUTS**

Education; Administration	27413	R277-760	5YR	9/7/2004	2004-19/51
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**DRUG ABUSE**

Human Resource Management; Administration	27174	R477-14	NSC	6/1/2004	Not Printed
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**DRUG/ALCOHOL EDUCATION**

Human Resource Management; Administration	27174	R477-14	NSC	6/1/2004	Not Printed
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**DUAL EMPLOYMENT**

Human Resource Management; Administration	27167	R477-8	AMD	7/2/2004	2004-11/50
	27273	R477-8-6	NSC	7/2/2004	Not Printed

**DUAL ENROLLMENT**

Education; Administration	27205	R277-438	5YR	6/1/2004	2004-12/79
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**DUE PROCESS**

Human Services; Mental Health	27258	R523-1	NSC	7/1/2004	Not Printed
	27117	R523-1-10	AMD	6/17/2004	2004-10/21
	27118	R523-1-16	AMD	6/17/2004	2004-10/23
	27257	R523-1-22	AMD	8/17/2004	2004-14/25

**DUI PROGRAMS**

Human Services; Substance Abuse	27511	R544-4 (Changed to R523-22)	NSC	12/1/2004	Not Printed
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**DUST**

Environmental Quality; Air Quality	27220	R307-215	5YR	6/8/2004	2004-13/68
	27106	R307-309	EXT	6/8/2004 see 5YR DAR No. 27217	Not Printed
	27217	R307-309	5YR	6/8/2004	2004-13/68

**EDUCATION**

Commerce; Consumer Protection	26905	R152-34	AMD	5/20/2004	2004-4/2
Commerce; Real Estate	27241	R162-103	AMD	10/7/2004	2004-14/2
	27349	R162-103	AMD	11/24/2004	2004-17/7
	27350	R162-104	AMD	11/24/2004	2004-17/9
Education; Administration	27204	R277-422	AMD	7/16/2004	2004-12/8
	27411	R277-521	5YR	9/7/2004	2004-19/50

**EDUCATION FINANCE**

Education; Administration	26960	R277-425	5YR	2/26/2004	2004-6/59
	27407	R277-451	5YR	9/7/2004	2004-19/48
	27422	R277-451	AMD	11/2/2004	2004-19/30

**EDUCATIONAL ADMINISTRATION**

Education; Administration	27341	R277-800	5YR	8/10/2004	2004-17/55
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**EDUCATIONAL EXPENDITURES**

Education; Administration	27308	R277-408	REP	9/2/2004	2004-15/18
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**EDUCATIONAL FACILITIES**

Education; Administration	27407	R277-451	5YR	9/7/2004	2004-19/48
	27422	R277-451	AMD	11/2/2004	2004-19/30
	27517	R277-471	5YR	11/1/2004	2004-22/69
	27341	R277-800	5YR	8/10/2004	2004-17/55

**EDUCATIONAL PROGRAM EVALUATIONS**

Education; Administration	26980	R277-501	AMD	4/15/2004	2004-6/5
	27206	R277-501	AMD	7/16/2004	2004-12/10

<b><u>EDUCATIONAL TESTING</u></b>					
Education; Administration	26962	R277-712	5YR	2/26/2004	2004-6/60
<b><u>EDUCATIONAL TUITION</u></b>					
Human Resource Management; Administration	27173	R477-10	NSC	7/1/2004	Not Printed
<b><u>EDUCATOR</u></b>					
Education; Administration	26851	R277-520	R&R	2/5/2004	2004-1/20
	27210	R277-520	AMD	7/16/2004	2004-12/21
<b><u>EDUCATOR LICENSE</u></b>					
Education; Administration	26981	R277-514	AMD	4/15/2004	2004-6/10
<b><u>EDUCATOR LICENSE RENEWAL</u></b>					
Education; Administration	26980	R277-501	AMD	4/15/2004	2004-6/5
	27206	R277-501	AMD	7/16/2004	2004-12/10
<b><u>EDUCATOR LICENSING</u></b>					
Education; Administration	26827	R277-502	AMD	1/15/2004	2003-24/6
	27207	R277-502	AMD	7/16/2004	2004-12/14
	27448	R277-502	NSC	12/1/2004	Not Printed
	27000	R277-518	AMD	5/5/2004	2004-7/8
<b><u>EDUCATORS</u></b>					
Professional Practices Advisory Commission; Administration	27141	R686-103	5YR	5/5/2004	2004-11/91
	27310	R686-103	AMD	9/2/2004	2004-15/58
<b><u>EFFLUENT STANDARDS</u></b>					
Environmental Quality; Water Quality	26796	R317-1	AMD	3/29/2004	2003-23/16
<b><u>ELDERLY</u></b>					
Human Services; Aging and Adult Services	27248	R510-107	EMR	7/1/2004	2004-14/43
	27249	R510-107	AMD	8/17/2004	2004-14/18
<b><u>ELECTIONS</u></b>					
Lieutenant Governor; Elections	27123	R623-2	NEW	6/16/2004	2004-10/24
	27127	R623-3	NEW	6/16/2004	2004-10/27
	27414	R623-3	NSC	11/15/2004	Not Printed
	27537	R623-3	NSC	11/15/2004	Not Printed
<b><u>ELECTRICIANS</u></b>					
Commerce; Occupational and Professional Licensing	27112	R156-55b	AMD	6/15/2004	2004-10/6
	27394	R156-55b-302c	NSC	12/1/2004	Not Printed
<b><u>ELECTRONIC DATA INTERCHANGE</u></b>					
Health; Administration	27260	R380-25	5YR	6/30/2004	2004-14/56
<b><u>ELECTRONIC HIGH SCHOOL</u></b>					
Education; Administration	26982	R277-725	NEW	4/15/2004	2004-6/12
	27307	R277-725	AMD	9/2/2004	2004-15/21
<b><u>ELEVATORS</u></b>					
Labor Commission; Safety	26966	R616-3-3	AMD	4/15/2004	2004-6/56
<b><u>EMERGENCY MEDICAL SERVICES</u></b>					
Health; Health Systems Improvement, Emergency Medical Services	27466	R426-11	5YR	10/1/2004	2004-20/77
	27439	R426-12	5YR	9/20/2004	2004-20/77
	27463	R426-13	5YR	10/1/2004	2004-20/78
	27465	R426-14	5YR	10/1/2004	2004-20/78
	27467	R426-15	5YR	10/1/2004	2004-20/79
	27464	R426-16	5YR	10/1/2004	2004-20/79
	27468	R426-100	5YR	10/1/2004	2004-20/80

**EMISSION FEES**

Environmental Quality; Air Quality	26940	R307-415	5YR	2/9/2004	2004-5/45
	26947	R307-415-6c	AMD	8/3/2004 see CPR in 07/01/2004 Bulletin	2004-5/10
	26947	R307-415-6c	CPR	8/3/2004	2004-13/52

**EMPLOYEE BENEFIT PLANS**

Human Resource Management; Administration	27165	R477-6	AMD	7/2/2004	2004-11/37
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**EMPLOYEE PERFORMANCE EVALUATIONS**

Human Resource Management; Administration	27173	R477-10	NSC	7/1/2004	Not Printed
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**EMPLOYEE PRODUCTIVITY**

Human Resource Management; Administration	27173	R477-10	NSC	7/1/2004	Not Printed
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**EMPLOYEE TERMINATION**

Workforce Services; Workforce Information and Payment Services	27192	R994-405	AMD	7/19/2004	2004-12/70
	27472	R994-405	AMD	11/16/2004	2004-20/66

**EMPLOYEE'S RIGHTS**

Workforce Services; Workforce Information and Payment Services	27192	R994-405	AMD	7/19/2004	2004-12/70
	27472	R994-405	AMD	11/16/2004	2004-20/66

**EMPLOYMENT**

Human Resource Management; Administration	27163	R477-4	AMD	7/2/2004	2004-11/33
	27172	R477-5	NSC	7/1/2004	Not Printed
Human Services; Aging and Adult Services	27248	R510-107	EMR	7/1/2004	2004-14/43
	27249	R510-107	AMD	8/17/2004	2004-14/18
Workforce Services; Workforce Information and Payment Services	27192	R994-405	AMD	7/19/2004	2004-12/70
	27472	R994-405	AMD	11/16/2004	2004-20/66

**EMPLOYMENT AGENCIES**

Labor Commission; Antidiscrimination and Labor, Labor	27228	R610-4	5YR	6/11/2004	2004-13/71
---	-------	--------	-----	-----------	------------

**EMPLOYMENT SUPPORT PROCEDURES**

Workforce Services; Employment Development	27215	R986-100-104	NSC	6/1/2004	Not Printed
	26932	R986-100-134	AMD	4/1/2004	2004-4/33

**ENGINEERS**

Administrative Services; Facilities Construction and Management	27608	R23-2	5YR	12/23/2004	2005-2/168
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**ENROLLMENT**

Education; Administration	27409	R277-463	5YR	9/7/2004	2004-19/49
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**ENROLLMENT OPTIONS**

Education; Administration	26871	R277-437	5YR	1/5/2004	2004-3/42
---------------------------	-------	----------	-----	----------	-----------

**ENTERPRISE ZONES**

Tax Commission; Auditing	27093	R865-9I-38	AMD	6/29/2004	2004-9/18
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**ENVIRONMENT**

Tax Commission; Auditing	26957	R865-7H	5YR	2/25/2004	2004-6/63
	27269	R865-13G-10	AMD	9/14/2004	2004-14/32

**ENVIRONMENTAL HEALTH**

Environmental Quality; Drinking Water	26988	R309-605	NSC	5/1/2004	Not Printed
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**ENVIRONMENTAL PROTECTION**

Environmental Quality; Air Quality	26940	R307-415	5YR	2/9/2004	2004-5/45
	26947	R307-415-6c	AMD	8/3/2004 see CPR in 07/01/2004 Bulletin	2004-5/10
	26947	R307-415-6c	CPR	8/3/2004	2004-13/52

**EXCEPTIONAL CHILDREN**

Education; Administration	27413	R277-760	5YR	9/7/2004	2004-19/51
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**EX-CONVICTS**

Human Services; Youth Corrections	27284	R547-10	NSC	7/1/2004	Not Printed
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**EXITING PROVIDERS**

Public Service Commission; Administration	26785	R746-350	NEW	1/15/2004	2003-23/79
	26901	R746-350	NSC	3/1/2004	Not Printed

**EXTINGUISHERS**

Public Safety; Fire Marshal	27479	R710-1-9	AMD	12/2/2004	2004-21/27
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**EYEGLASSES**

Health; Health Care Financing, Coverage and Reimbursement Policy	26783	R414-53	AMD	1/28/2004	2003-23/28
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**FACILITIES**

Education; Administration	26829	R277-724	NEW	1/15/2004	2003-24/11
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**FACILITY**

Health; Health Care Financing, Coverage and Reimbursement Policy	26854	R414-9	NEW	2/3/2004	2004-1/26
	27151	R414-9	NSC	6/1/2004	Not Printed

**FAIR EMPLOYMENT PRACTICES**

Human Resource Management; Administration	27161	R477-2	AMD	7/2/2004	2004-11/29
	27163	R477-4	AMD	7/2/2004	2004-11/33

**FAMILY EMPLOYMENT PROGRAM**

Workforce Services; Employment Development	26704	R986-200	AMD	2/2/2004	2003-21/77
	26934	R986-200	AMD	4/1/2004	2004-4/35
	26997	R986-200-208	NSC	5/1/2004	Not Printed

**FEDERAL ELECTION REFORM**

Lieutenant Governor; Elections	27127	R623-3	NEW	6/16/2004	2004-10/27
	27414	R623-3	NSC	11/15/2004	Not Printed
	27537	R623-3	NSC	11/15/2004	Not Printed

**FEES**

Environmental Quality; Environmental Response and Remediation	27196	R311-203	AMD	9/9/2004	2004-12/34
Human Services; Mental Health	27258	R523-1	NSC	7/1/2004	Not Printed
	27117	R523-1-10	AMD	6/17/2004	2004-10/21
	27118	R523-1-16	AMD	6/17/2004	2004-10/23
	27257	R523-1-22	AMD	8/17/2004	2004-14/25
Natural Resources; Parks and Recreation	26776	R651-611	AMD	1/6/2004	2003-23/52
	26948	R651-611	AMD	4/1/2004	2004-5/29
	27184	R651-611	AMD	7/19/2004	2004-12/62
	27305	R651-611	AMD	9/1/2004	2004-15/52

**FILING DEADLINES**

Labor Commission; Adjudication	26772	R602-1	AMD	1/2/2004	2003-23/46
Workforce Services; Workforce Information and Payment Services	27471	R994-403	R&R	11/16/2004	2004-20/47

**FINANCE**

Education; Administration	27204	R277-422	AMD	7/16/2004	2004-12/8
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COMPLETE 2004 RULES INDEX

**FINANCIAL AID**

Regents (Board Of); Administration	27390	R765-605	AMD	10/19/2004	2004-18/52
	27431	R765-605-3	NSC	11/1/2004	Not Printed

**FINANCIAL ASSISTANCE**

Environmental Quality; Drinking Water	26975	R309-705	AMD	8/6/2004 see CPR in 07/01/2004 Bulletin	2004-6/39
	26975	R309-705	CPR	8/6/2004	2004-13/57

**FINANCIAL DISCLOSURES**

Health; Health Care Financing, Coverage and Reimbursement Policy	27232	R414-304	AMD	8/26/2004	2004-13/14
	27379	R414-304	AMD	10/16/2004	2004-18/21

**FINANCIAL REIMBURSEMENT**

Public Safety; Comprehensive Emergency Management	27336	R704-1	5YR	8/6/2004	2004-17/56
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**FINANCING OF PROGRAMS**

Human Services; Substance Abuse	27508	R544-1 (Changed to R523-20)	NSC	12/1/2004	Not Printed
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**FIRE PREVENTION**

Public Safety; Fire Marshal	27479	R710-1-9	AMD	12/2/2004	2004-21/27
	26793	R710-4	AMD	1/2/2004	2003-23/67
	26920	R710-4	EMR	1/28/2004	2004-4/66
	27003	R710-4	AMD	5/5/2004	2004-7/19
	27480	R710-7-7	AMD	12/2/2004	2004-21/28
	27436	R710-8	AMD	11/16/2004	2004-20/38
	26788	R710-9	AMD	1/2/2004	2003-23/72
	26919	R710-9	EMR	1/28/2004	2004-4/70
	27002	R710-9	AMD	5/5/2004	2004-7/23

**FIREARMS**

Human Services; Youth Corrections	27267	R547-14	NSC	7/1/2004	Not Printed
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**FIREWORKS**

Public Safety; Fire Marshal	26795	R710-2	AMD	1/2/2004	2003-23/65
	27324	R710-2	AMD	9/15/2004	2004-16/26

**FISH**

Natural Resources; Wildlife Resources	26659	R657-13	AMD	1/2/2004	2003-20/28
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**FISHING**

Natural Resources; Wildlife Resources	26659	R657-13	AMD	1/2/2004	2003-20/28
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**FOOD INSPECTION**

Agriculture and Food; Regulatory Services	27149	R70-310	AMD	7/2/2004	2004-11/6
	27286	R70-310	5YR	7/9/2004	2004-15/65
	27069	R70-330	AMD	6/2/2004	2004-9/4
	27425	R70-440	NEW	11/4/2004	2004-19/4
	27453	R70-540	NEW	11/16/2004	2004-20/9
	27291	R70-630	5YR	7/13/2004	2004-15/65
	27290	R70-630	AMD	9/8/2004	2004-15/4
	27380	R70-630	NSC	11/1/2004	Not Printed
	27438	R70-630	NSC	12/1/2004	Not Printed

**FOOD PROGRAMS**

Education; Administration	26829	R277-724	NEW	1/15/2004	2003-24/11
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**FOOD SERVICES**

Health; Epidemiology and Laboratory Services, Environmental Services	27187	R392-101	5YR	5/24/2004	2004-12/80
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**FOREIGN STUDENTS**

Education; Administration	27309	R277-615	REP	9/2/2004	2004-15/20
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**FOREST PRODUCTS**

School and Institutional Trust Lands; Administration 27178 R850-70 AMD 7/2/2004 2004-11/80

**FOSTER CARE**

Human Services; Administration, Administrative Services, Licensing 27255 R501-8 NSC 7/1/2004 Not Printed

27256 R501-12 NSC 7/1/2004 Not Printed  
 27275 R501-12 AMD 9/9/2004 2004-15/46  
 27417 R501-12-8 NSC 10/1/2004 Not Printed  
 Human Services; Child and Family Services 27259 R512-32 NSC 7/1/2004 Not Printed  
 27243 R512-306 EMR 6/22/2004 2004-14/50  
 27321 R512-306 NEW 9/22/2004 2004-16/24

**FRANCHISE**

Tax Commission; Auditing 27388 R865-6F-8 AMD 10/19/2004 2004-18/58  
 27386 R865-6F-36 AMD 10/19/2004 2004-18/61

**FRAUD**

Commerce; Consumer Protection 27238 R152-21 5YR 6/15/2004 2004-13/66

**FREEDOM OF INFORMATION**

Administrative Services; Administration 27495 R13-2 AMD 12/21/2004 2004-21/5

**FREEDOM OF RELIGION**

Education; Administration 27214 R277-105 5YR 6/1/2004 2004-12/79

**FUEL**

Tax Commission; Auditing 27389 R865-4D-24 AMD 10/19/2004 2004-18/57

**FURBEARERS**

Natural Resources; Wildlife Resources 27369 R657-11 AMD 10/19/2004 2004-18/51

**GAME LAWS**

Natural Resources; Wildlife Resources 26817 R657-5 AMD 1/21/2004 2003-24/46  
 27159 R657-5 AMD 7/2/2004 2004-11/74  
 27283 R657-6 AMD 9/1/2004 2004-15/55  
 27368 R657-10 AMD 10/19/2004 2004-18/49  
 27369 R657-11 AMD 10/19/2004 2004-18/51  
 26818 R657-17-4 AMD 1/21/2004 2003-24/55  
 26867 R657-33 AMD 2/24/2004 2004-2/3  
 27498 R657-54 NEW 12/2/2004 2004-21/23

**GASOLINE**

Environmental Quality; Air Quality 27487 R307-326-7 NSC 12/1/2004 Not Printed  
 Tax Commission; Auditing 27269 R865-13G-10 AMD 9/14/2004 2004-14/32

**GEOLOGY**

Commerce; Occupational and Professional Licensing 26777 R156-76-102 AMD 1/20/2004 2003-23/14

**GIFTED CHILDREN**

Education; Administration 26962 R277-712 5YR 2/26/2004 2004-6/60

**GOVERNMENT CORPORATIONS**

Workforce Services; Workforce Information and Payment Services 27298 R994-311 5YR 7/14/2004 2004-15/67

**GOVERNMENT DOCUMENTS**

Administrative Services; Records Committee 26973 R35-1 EXT 7/2/2004 see Not Printed  
 5YR DAR No. 27277  
 27277 R35-1 5YR 7/2/2004 2004-15/62  
 27278 R35-2 5YR 7/2/2004 2004-15/62  
 27279 R35-3 5YR 7/2/2004 2004-15/63  
 27280 R35-4 5YR 7/2/2004 2004-15/63  
 27281 R35-5 5YR 7/2/2004 2004-15/64  
 27282 R35-6 5YR 7/2/2004 2004-15/64

**GOVERNMENT ETHICS**

Human Resource Management; Administration 27168 R477-9 AMD 7/2/2004 2004-11/53

**GOVERNMENT HEARINGS**

Commerce; Occupational and Professional Licensing	27401	R156-46b	AMD	11/2/2004	2004-19/6
Human Resource Management; Administration	27169	R477-11	AMD	7/2/2004	2004-11/56
Public Service Commission; Administration	26849	R746-100	AMD	4/1/2004 see CPR in 03/01/2004 Bulletin	2004-1/28
	26849	R746-100	CPR	4/1/2004	2004-5/36

**GOVERNMENT RECORDS ACCESS**

Crime Victim Reparations; Administration	27461	R270-4	5YR	9/30/2004	2004-20/75
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**GRAMA (Government Records Access and Management Act)**

Regents (Board Of); Salt Lake Community College	26994	R784-1	5YR	3/12/2004	2004-7/36
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**GRANTS**

Environmental Quality; Water Quality	27179	R317-100-3	AMD	8/20/2004	2004-11/15
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**GRAYWATER**

Environmental Quality; Water Quality	26797	R317-401	NEW	7/2/2004 see CPR in 04/15/2004 Bulletin	2003-23/21
	26797	R317-401	CPR	7/2/2004	2004-8/89

**GREAT SEAL**

Lieutenant Governor; Administration	27221	R622-2	5YR	6/9/2004	2004-13/71
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**GRIEVANCE PROCEDURES**

Tax Commission; Administration	27268	R861-1A-16	NSC	7/1/2004	Not Printed
	27155	R861-1A-37	AMD	8/2/2004	2004-11/83
	27354	R861-1A-37	AMD	10/19/2004	2004-17/36
	27236	R861-1A-38	AMD	9/14/2004	2004-13/47

**GRIEVANCES**

Human Resource Management; Administration	27162	R477-3	AMD	7/2/2004	2004-11/32
	27169	R477-11	AMD	7/2/2004	2004-11/56

**GROUND WATER**

Environmental Quality; Water Quality	27021	R317-6	AMD	7/12/2004	2004-8/46
	27177	R317-6	AMD	8/20/2004	2004-11/8
	27437	R317-6-6	NSC	12/1/2004	Not Printed

**HARDSHIP GRANTS**

Environmental Quality; Drinking Water	26974	R309-700	AMD	8/6/2004 see CPR in 07/01/2004 Bulletin	2004-6/31
	26974	R309-700	CPR	8/6/2004	2004-13/53

**HATCH ACT**

Human Resource Management; Administration	27168	R477-9	AMD	7/2/2004	2004-11/53
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**HAZARDOUS AIR POLLUTANT**

Environmental Quality; Air Quality	26887	R307-214	EXT	2/9/2004 see 5YR DAR No. 26939	Not Printed
	26939	R307-214	5YR	2/9/2004	2004-5/44
	27293	R307-214-2	AMD	10/7/2004	2004-15/28

**HAZARDOUS SUBSTANCES**

Environmental Quality; Environmental Response and Remediation	27194	R311-200	AMD	9/9/2004	2004-12/27
	27195	R311-201	AMD	9/9/2004	2004-12/30
	27196	R311-203	AMD	9/9/2004	2004-12/34
	27197	R311-204	AMD	9/9/2004	2004-12/37
	27198	R311-205	AMD	9/9/2004	2004-12/39

	27199	R311-206	AMD	9/9/2004	2004-12/44
	27200	R311-212	AMD	9/9/2004	2004-12/48
<b><u>HAZARDOUS WASTE</u></b>					
Environmental Quality; Solid and Hazardous Waste	27289	R315-2-13	AMD	9/15/2004	2004-15/35
<b><u>HEALTH</u></b>					
Health; Administration	27260	R380-25	5YR	6/30/2004	2004-14/56
Health; Center for Health Data, Health Care Statistics	26800	R428-10	AMD	2/27/2004	2003-23/36
	26799	R428-11	AMD	2/27/2004	2003-23/37
<b><u>HEALTH CARE</u></b>					
Health; Community and Family Health Services, Children with Special Health Care Needs	27443	R398-1	5YR	9/22/2004	2004-20/76
<b><u>HEALTH CARE FACILITIES</u></b>					
Health; Health Systems Improvement, Licensing	27250	R432-32	NEW	9/1/2004	2004-14/17
<b><u>HEALTH FACILITIES</u></b>					
Health; Health Systems Improvement, Licensing	26868	R432-1	5YR	1/5/2004	2004-3/44
	26876	R432-2	5YR	1/5/2004	2004-3/45
	27303	R432-2	AMD	9/14/2004	2004-15/44
	26825	R432-2-11	AMD	4/12/2004	2003-24/26
	26875	R432-3	5YR	1/5/2004	2004-3/45
	26869	R432-4	5YR	1/5/2004	2004-3/46
	26877	R432-5	5YR	1/5/2004	2004-3/46
	26886	R432-6	5YR	1/8/2004	2004-3/47
	27374	R432-100-7	AMD	11/10/2004	2004-18/24
	26755	R432-100-16	AMD	1/9/2004	2003-22/24
	27186	R432-100-17	AMD	7/19/2004	2004-12/57
	26993	R432-150-6	AMD	5/26/2004	2004-7/13
	27372	R432-150-16	AMD	11/10/2004	2004-18/25
	26992	R432-270-29b	AMD	5/26/2004	2004-7/15
<b><u>HEALTH INSURANCE</u></b>					
Human Services; Recovery Services	27434	R527-201	AMD	11/30/2004	2004-20/15
Insurance; Administration	27150	R590-167	AMD	10/7/2004 see CPR in 09/01/2004 Bulletin	2004-11/60
	27150	R590-167	CPR	10/7/2004	2004-17/49
	27484	R590-167	NSC	12/1/2004	Not Printed
<b><u>HEALTH INSURANCE FILINGS</u></b>					
Insurance; Administration	26806	R590-220	NEW	3/24/2004 see CPR in 02/15/2004 Bulletin	2003-24/33
	26806	R590-220	CPR	3/24/2004	2004-4/61
	27013	R590-220	NSC	4/1/2004	Not Printed
<b><u>HEALTH MAINTENANCE ORGANIZATIONS</u></b>					
Insurance; Administration	27506	R590-232	NEW	12/29/2004	2004-22/49
<b><u>HEALTH PLANNING</u></b>					
Health; Center for Health Data, Health Care Statistics	26800	R428-10	AMD	2/27/2004	2003-23/36
	26799	R428-11	AMD	2/27/2004	2003-23/37
<b><u>HEARING AIDS</u></b>					
Commerce; Occupational and Professional Licensing	27247	R156-46a	5YR	6/24/2004	2004-14/56
<b><u>HEARINGS</u></b>					
Labor Commission; Adjudication	26773	R602-2-1	AMD	1/2/2004	2003-23/47
	27492	R602-2-4	AMD	12/2/2004	2004-21/17
<b><u>HELP AMERICA VOTE ACT</u></b>					
Lieutenant Governor; Elections	27123	R623-2	NEW	6/16/2004	2004-10/24

**HIGHER EDUCATION**

Regents (Board Of); Administration	27390	R765-605	AMD	10/19/2004	2004-18/52
	27431	R765-605-3	NSC	11/1/2004	Not Printed
	27387	R765-612	AMD	10/19/2004	2004-18/56

**HIGHWAYS**

Transportation; Administration	26720	R907-67	NEW	1/5/2004	2003-22/50
Transportation; Operations, Maintenance	27111	R918-4	AMD	7/20/2004	2004-10/33

**HIRING PRACTICES**

Human Resource Management; Administration	27163	R477-4	AMD	7/2/2004	2004-11/33
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**HISTORIC PRESERVATION**

Tax Commission; Auditing	27388	R865-6F-8	AMD	10/19/2004	2004-18/58
	27386	R865-6F-36	AMD	10/19/2004	2004-18/61
	27093	R865-9I-38	AMD	6/29/2004	2004-9/18

**HMO (Health Maintenance Organization) INSURANCE**

Insurance; Administration	27445	R590-76	5YR	9/23/2004	2004-20/81
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**HOLIDAYS**

Human Resource Management; Administration	27166	R477-7	AMD	7/2/2004	2004-11/42
	27272	R477-7-16	NSC	7/2/2004	Not Printed

**HOSPITAL POLICY**

Health; Center for Health Data, Health Care Statistics	26800	R428-10	AMD	2/27/2004	2003-23/36
	26799	R428-11	AMD	2/27/2004	2003-23/37

**HOSPITALS**

Health; Health Care Financing, Coverage and Reimbursement Policy	27222	R414-1B	EMR	6/9/2004	2004-13/64
	27227	R414-1B	NEW	10/6/2004 see CPR in 09/01/2004 Bulletin	2004-13/4
	27227	R414-1B	CPR	10/6/2004	2004-17/48

**HOSTILE WORK ENVIRONMENT**

Human Resource Management; Administration	27175	R477-15	NSC	7/1/2004	Not Printed
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**HUMAN SERVICES**

Human Services; Administration, Administrative Services, Licensing	27008	R501-1	NSC	4/1/2004	Not Printed
	26925	R501-2	AMD	3/17/2004	2004-4/16
	27135	R501-2	NSC	7/1/2004	Not Printed
	26904	R501-7	AMD	5/28/2004	2004-4/22
	27229	R501-7	AMD	8/5/2004	2004-13/28
	27415	R501-7	NSC	10/1/2004	Not Printed
	27255	R501-8	NSC	7/1/2004	Not Printed
	27256	R501-12	NSC	7/1/2004	Not Printed
	27275	R501-12	AMD	9/9/2004	2004-15/46
	27417	R501-12-8	NSC	10/1/2004	Not Printed
	26804	R501-16	AMD	4/12/2004	2003-24/29
	26874	R501-16	NSC	5/1/2004	Not Printed
Human Services; Services for People with Disabilities	27233	R539-1	AMD	8/19/2004	2004-13/35
	27356	R539-1	NSC	11/1/2004	Not Printed

**HUNTING**

Natural Resources; Wildlife Resources	26819	R657-38	AMD	1/21/2004	2003-24/56
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**HUNTING AND FISHING LICENSES**

Natural Resources; Wildlife Resources	26818	R657-17-4	AMD	1/21/2004	2003-24/55
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**IGNITION INTERLOCK SYSTEM**

Public Safety; Driver License	27364	R708-31	5YR	8/25/2004	2004-18/86
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**IMPLEMENTS OF HUSBANDRY**

Transportation; Motor Carrier	26823	R909-1	AMD	3/1/2004	2003-24/66
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**INCOME**

Health; Health Care Financing, Coverage and Reimbursement Policy	27230	R414-303	AMD	8/26/2004	2004-13/7
	27378	R414-303	AMD	10/16/2004	2004-18/18
	27232	R414-304	AMD	8/26/2004	2004-13/14
	27379	R414-304	AMD	10/16/2004	2004-18/21
Human Services; Recovery Services	27391	R527-300	AMD	11/30/2004	2004-18/27

**INCOME TAX**

Tax Commission; Auditing	27093	R865-9I-38	AMD	6/29/2004	2004-9/18
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**INCOME WITHHOLDING FEES**

Human Services; Recovery Services	27109	R527-302	5YR	4/21/2004	2004-10/38
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**INDEPENDENT LIVING**

Human Services; Child and Family Services	27243	R512-306	EMR	6/22/2004	2004-14/50
	27321	R512-306	NEW	9/22/2004	2004-16/24

**INDUSTRIAL WASTE**

Environmental Quality; Water Quality	26796	R317-1	AMD	3/29/2004	2003-23/16
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**INFORMAL ADJUDICATIVE PROCEEDINGS**

Labor Commission; Industrial Accidents	27595	R612-9	5YR	12/17/2004	2005-2/169
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**INFORMAL REVIEW**

Public Service Commission; Administration	26780	R746-200-6	AMD	1/7/2004	2003-23/76
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**INFORMATION TECHNOLOGY RESOURCES**

Governor; Planning and Budget, Chief Information Officer	27119	R365-7	NEW	6/28/2004	2004-10/20
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**INMATES**

Education; Administration	26870	R277-735	5YR	1/5/2004	2004-3/43
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**IN-SERVICE TRAINING**

Public Safety; Peace Officer Standards and Training	27317	R728-502	NEW	12/10/2004	2004-16/29
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**INSPECTIONS**

Agriculture and Food; Animal Industry	26990	R58-20	5YR	3/5/2004	2004-7/35
	26989	R58-20-5	AMD	5/4/2004	2004-7/3
Agriculture and Food; Plant Industry	26949	R68-20-1	AMD	4/1/2004	2004-5/2
	26987	R68-20-1	NSC	5/1/2004	Not Printed
Agriculture and Food; Regulatory Services	27424	R70-960	NEW	11/2/2004	2004-19/4

**INSTRUCTIONAL MATERIALS**

Education; Administration	26999	R277-469	AMD	5/5/2004	2004-7/5
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**INSTRUCTOR CERTIFICATION**

Public Safety; Peace Officer Standards and Training	27317	R728-502	NEW	12/10/2004	2004-16/29
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**INSURANCE**

Human Resource Management; Administration	27165	R477-6	AMD	7/2/2004	2004-11/37
Insurance; Administration	26787	R590-102	AMD	1/8/2004	2003-23/39
	27345	R590-102	AMD	10/7/2004	2004-17/14
	26882	R590-102-5	NSC	2/1/2004	Not Printed
	27134	R590-160-5	NSC	7/1/2004	Not Printed
	27126	R590-166	5YR	4/28/2004	2004-10/39
	27451	R590-167	5YR	9/28/2004	2004-20/84
	26976	R590-170	5YR	3/1/2004	2004-6/62
	27478	R590-175	NSC	12/1/2004	Not Printed
	27082	R590-229	NEW	10/7/2004 see CPR (First) in 07/01/2004 Bulletin	2004-9/12
	27082	R590-229	CPR	10/7/2004 see CPR (Second) in 09/01/2004 Bulletin	2004-13/60
	27082	R590-229	CPR	10/7/2004	2004-17/53

COMPLETE 2004 RULES INDEX

	27083	R590-230	NEW	6/3/2004	2004-9/14
	27339	R590-230-5	NSC	9/1/2004	Not Printed
<b><u>INSURANCE BENEFITS</u></b>					
Insurance; Administration	27191	R590-204	REP	7/27/2004	2004-12/60
<b><u>INSURANCE COMPANIES</u></b>					
Insurance; Administration	27446	R590-127	5YR	9/24/2004	2004-20/83
	27449	R590-129	5YR	9/28/2004	2004-20/84
	27476	R590-129-1	NSC	12/1/2004	Not Printed
	27619	R590-198	5YR	12/29/2004	2005-2/169
<b><u>INSURANCE LAW</u></b>					
Insurance; Administration	27452	R590-67	5YR	9/28/2004	2004-20/81
	27447	R590-79	5YR	9/27/2004	2004-20/82
	27450	R590-83	5YR	9/28/2004	2004-20/83
	27477	R590-83-1	NSC	12/1/2004	Not Printed
	26978	R590-86	REP	4/23/2004	2004-6/53
	27121	R590-93	5YR	4/28/2004	2004-10/38
	27122	R590-98	5YR	4/28/2004	2004-10/39
	27287	R590-136	NSC	8/1/2004	Not Printed
	27113	R590-190	5YR	4/26/2004	2004-10/40
	27114	R590-190-1	NSC	5/1/2004	Not Printed
	27115	R590-191	5YR	4/26/2004	2004-10/40
	27116	R590-191-1	NSC	5/1/2004	Not Printed
	27319	R590-192	5YR	7/30/2004	2004-16/33
	27618	R590-197	5YR	12/29/2004	2005-2/168
<b><u>INSURANCE LICENSING</u></b>					
Insurance; Administration	27011	R590-195	5YR	3/19/2004	2004-8/97
	27010	R590-195	NSC	6/1/2004	Not Printed
<b><u>INTERCONNECTION</u></b>					
Public Service Commission; Administration	26826	R746-348-6	AMD	4/13/2004	2003-24/65
	26883	R746-365	5YR	1/6/2004	2004-3/49
<b><u>INTEREST BUY-DOWNS</u></b>					
Environmental Quality; Drinking Water	26974	R309-700	AMD	8/6/2004 see CPR in 07/01/2004 Bulletin	2004-6/31
	26974	R309-700	CPR	8/6/2004	2004-13/53
<b><u>INTERNET ACCESS</u></b>					
Community and Economic Development; Community Development, Library	27125	R223-2-2	AMD	9/8/2004	2004-10/17
<b><u>INTERPRETERS</u></b>					
Education; Rehabilitation	27532	R280-203	5YR	11/5/2004	2004-23/57
<b><u>INTERSTATE HIGHWAY SYSTEM</u></b>					
Transportation; Administration	26878	R907-64	5YR	1/5/2004	2004-3/49
	26879	R907-65	5YR	1/5/2004	2004-3/50
<b><u>INVENTORIES</u></b>					
Environmental Quality; Air Quality	26942	R307-150	5YR	2/9/2004	2004-5/43
<b><u>INVESTMENT ADVISERS</u></b>					
Money Management Council; Administration	26676	R628-19	NEW	2/10/2004 see CPR in 01/01/2004 Bulletin	2003-20/27
	26676	R628-19	CPR	2/10/2004	2004-1/38
<b><u>IT (Information Technology) BID COMMITTEE</u></b>					
Governor; Planning and Budget, Chief Information Officer	27398	R365-10	NEW	11/8/2004	2004-19/38
<b><u>IT PLANNING</u></b>					
Governor; Planning and Budget, Chief Information Officer	27108	R365-6	NEW	6/28/2004	2004-10/18

**IT STANDARDS COUNCIL**

Governor; Planning and Budget, Chief Information Officer	27398	R365-10	NEW	11/8/2004	2004-19/38
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**JOB DESCRIPTIONS**

Human Resource Management; Administration	27162	R477-3	AMD	7/2/2004	2004-11/32
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**JURISDICTION**

Workforce Services; Workforce Information and Payment Services	26924	R994-406	AMD	4/4/2004	2004-4/45
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**JUVENILE CORRECTIONS**

Human Services; Youth Corrections	27261	R547-1	NSC	7/1/2004	Not Printed
	27262	R547-3	NSC	7/1/2004	Not Printed
	27264	R547-6	NSC	7/1/2004	Not Printed
	27265	R547-7	NSC	7/1/2004	Not Printed
	27284	R547-10	NSC	7/1/2004	Not Printed
	27266	R547-12	NSC	7/1/2004	Not Printed
	27263	R547-13	NSC	7/1/2004	Not Printed

**JUVENILE DETENTION**

Human Services; Youth Corrections	27263	R547-13	NSC	7/1/2004	Not Printed
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**JUVENILE OFFENDERS**

Education; Administration	27412	R277-714	5YR	9/7/2004	2004-19/51
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**LABORATORIES**

Health; Epidemiology and Laboratory Services, Laboratory Improvement	27234	R444-14	AMD	8/9/2004	2004-13/26
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Health; Epidemiology and Laboratory Services, Laboratory Services	26968	R438-13	5YR	2/27/2004	2004-6/61
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**LABORATORY ANIMALS**

Health; Epidemiology and Laboratory Services, Laboratory Services	26968	R438-13	5YR	2/27/2004	2004-6/61
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**LAW**

Public Safety; Fire Marshal	26788	R710-9	AMD	1/2/2004	2003-23/72
	26919	R710-9	EMR	1/28/2004	2004-4/70
	27002	R710-9	AMD	5/5/2004	2004-7/23

**LAW ENFORCEMENT**

Public Safety; Highway Patrol	27100	R714-600	EXT	8/6/2004 see 5YR DAR No. 27337	Not Printed
	27337	R714-600	5YR	8/6/2004	2004-17/57

**LAW ENFORCEMENT OFFICER CERTIFICATION**

Public Safety; Administration	26969	R698-4	5YR	2/27/2004	2004-6/62
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**LAW ENFORCEMENT OFFICERS**

Public Safety; Peace Officer Standards and Training	27317	R728-502	NEW	12/10/2004	2004-16/29
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**LEARNER PERMIT**

Public Safety; Driver License	27362	R708-26	5YR	8/25/2004	2004-18/85
	27363	R708-26	NSC	9/1/2004	Not Printed

**LEAVE BENEFITS**

Human Resource Management; Administration	27166	R477-7	AMD	7/2/2004	2004-11/42
	27272	R477-7-16	NSC	7/2/2004	Not Printed

**LIBRARIES**

Community and Economic Development; Community Development, Library	27125	R223-2-2	AMD	9/8/2004	2004-10/17
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**LICENSE**

Education; Administration	26851	R277-520	R&R	2/5/2004	2004-1/20
	27210	R277-520	AMD	7/16/2004	2004-12/21
	27411	R277-521	5YR	9/7/2004	2004-19/50

**LICENSING**

Commerce; Administration	27312	R151-33	AMD	9/15/2004	2004-16/8
Commerce; Occupational and Professional Licensing	27358	R156-1	EMR	8/24/2004	2004-18/79
	27377	R156-1	AMD	10/18/2004	2004-18/4
	26805	R156-1-106	AMD	1/20/2004	2003-24/4
	27103	R156-1-302	NSC	6/1/2004	Not Printed
	26917	R156-5a	5YR	1/27/2004	2004-4/74
	26754	R156-17a-612	AMD	2/19/2004 see CPR in 01/15/2004 Bulletin	2003-22/11
	26754	R156-17a-612	CPR	2/19/2004	2004-2/10
	26786	R156-26a-303b	AMD	1/6/2004	2003-23/7
	27019	R156-26a-303b	AMD	5/24/2004	2004-8/32
	27301	R156-31b	AMD	12/21/2004 see CPR in 11/15/2004 Bulletin	2004-15/6
	27301	R156-31b	CPR	12/21/2004	2004-22/57
	27567	R156-31c	5YR	11/29/2004	2004-24/66
	26916	R156-37c	5YR	1/27/2004	2004-4/74
	26834	R156-38	AMD	2/3/2004	2004-1/5
	27020	R156-38	AMD	7/26/2004 see CPR in 06/15/2004 Bulletin	2004-8/39
	27020	R156-38	CPR	7/26/2004	2004-12/73
	26915	R156-39a	5YR	1/27/2004	2004-4/75
	27400	R156-42a	5YR	9/2/2004	2004-19/48
	27224	R156-44a	5YR	6/10/2004	2004-13/66
	27247	R156-46a	5YR	6/24/2004	2004-14/56
	26937	R156-47b	AMD	6/7/2004	2004-5/5
	26580	R156-54-302b	AMD	1/20/2004 see CPR in 12/15/2003 Bulletin	2003-18/4
	26580	R156-54-302b	CPR	1/20/2004	2003-24/70
	27441	R156-55a-301	NSC	10/1/2004	Not Printed
	27112	R156-55b	AMD	6/15/2004	2004-10/6
	27394	R156-55b-302c	NSC	12/1/2004	Not Printed
	27188	R156-55d-302f	AMD	10/5/2004 see CPR in 09/01/2004 Bulletin	2004-12/4
	27188	R156-55d-302f	CPR	10/5/2004	2004-17/47
	27101	R156-56	AMD	8/17/2004 see CPR in 07/15/2004 Bulletin	2004-9/5
	27101	R156-56	CPR	8/17/2004	2004-14/37
	27489	R156-56	AMD	1/1/2005	2004-21/6
	27474	R156-56-704	NSC	12/1/2004	Not Printed
	27490	R156-56-704	AMD	1/1/2005	2004-21/11
	27501	R156-60	5YR	10/21/2004	2004-22/68
	27285	R156-60a	AMD	9/1/2004	2004-15/17
	27502	R156-60a	5YR	10/21/2004	2004-22/68
	27503	R156-60b	5YR	10/21/2004	2004-22/69
	27225	R156-61	5YR	6/10/2004	2004-13/67
	26888	R156-63	AMD	3/4/2004	2004-3/5
	26956	R156-68	AMD	4/15/2004	2004-6/2
	26998	R156-71-202	AMD	5/4/2004	2004-7/3
	27140	R156-71-202	NSC	6/1/2004	Not Printed
	27355	R156-73	AMD	10/18/2004	2004-18/13
	26927	R156-74	5YR	2/2/2004	2004-4/75
	26777	R156-76-102	AMD	1/20/2004	2003-23/14

Human Services; Administration, Administrative Services, Licensing	27008	R501-1	NSC	4/1/2004	Not Printed
	26925	R501-2	AMD	3/17/2004	2004-4/16
	27135	R501-2	NSC	7/1/2004	Not Printed
	26904	R501-7	AMD	5/28/2004	2004-4/22
	27229	R501-7	AMD	8/5/2004	2004-13/28
	27415	R501-7	NSC	10/1/2004	Not Printed
	27255	R501-8	NSC	7/1/2004	Not Printed
	27256	R501-12	NSC	7/1/2004	Not Printed
	27275	R501-12	AMD	9/9/2004	2004-15/46
	27417	R501-12-8	NSC	10/1/2004	Not Printed
	26804	R501-16	AMD	4/12/2004	2003-24/29
	26874	R501-16	NSC	5/1/2004	Not Printed
Human Services; Youth Corrections	27261	R547-1	NSC	7/1/2004	Not Printed
	27265	R547-7	NSC	7/1/2004	Not Printed
Labor Commission; Antidiscrimination and Labor, Labor	27228	R610-4	5YR	6/11/2004	2004-13/71
Natural Resources; Wildlife Resources	27158	R657-27	AMD	7/2/2004	2004-11/77
Public Safety; Driver License	27051	R708-10	NSC	6/1/2004	Not Printed
	27360	R708-10	5YR	8/25/2004	2004-18/84
	27365	R708-24	5YR	8/25/2004	2004-18/85
<b><u>LIENS</u></b>					
Commerce; Occupational and Professional Licensing	26834	R156-38	AMD	2/3/2004	2004-1/5
	27020	R156-38	AMD	7/26/2004 see CPR in 06/15/2004 Bulletin	2004-8/39
	27020	R156-38	CPR	7/26/2004	2004-12/73
<b><u>LIFE INSURANCE FILINGS</u></b>					
Insurance; Administration	26951	R590-226	NEW	4/8/2004	2004-5/14
<b><u>LIQUEFIED PETROLEUM GAS</u></b>					
Public Safety; Fire Marshal	26801	R710-6	AMD	1/16/2004	2003-24/63
	26938	R710-6-1	AMD	4/1/2004	2004-5/32
	27351	R710-6-6	AMD	10/4/2004	2004-17/27
<b><u>LOANS</u></b>					
Environmental Quality; Drinking Water	26974	R309-700	AMD	8/6/2004 see CPR in 07/01/2004 Bulletin	2004-6/31
	26974	R309-700	CPR	8/6/2004	2004-13/53
	26975	R309-705	AMD	8/6/2004 see CPR in 07/01/2004 Bulletin	2004-6/39
	26975	R309-705	CPR	8/6/2004	2004-13/57
Environmental Quality; Water Quality	27180	R317-103	REP	8/20/2004	2004-11/16
<b><u>LOBBYIST</u></b>					
Lieutenant Governor; Elections	27381	R623-1	AMD	10/19/2004	2004-18/28
	27530	R623-1	5YR	11/4/2004	2004-23/61
<b><u>LOBBYIST LICENSE</u></b>					
Lieutenant Governor; Elections	27530	R623-1	5YR	11/4/2004	2004-23/61
<b><u>LOBBYIST REGISTRATION</u></b>					
Lieutenant Governor; Elections	27530	R623-1	5YR	11/4/2004	2004-23/61
<b><u>LT. GOVERNOR</u></b>					
Lieutenant Governor; Administration	27221	R622-2	5YR	6/9/2004	2004-13/71

**MACT (Maximum Achievable Control Technology)**

Environmental Quality; Air Quality	26887	R307-214	EXT	2/9/2004 see 5YR DAR No. 26939	Not Printed
	26939	R307-214	5YR	2/9/2004	2004-5/44
	27293	R307-214-2	AMD	10/7/2004	2004-15/28

**MANAGEMENT**

Natural Resources; Forestry, Fire and State Lands	26865	R652-40-1800	AMD	2/24/2004	2004-2/2
	27070	R652-41-1300	AMD	6/4/2004	2004-9/17

**MARRIAGE AND FAMILY THERAPIST**

Commerce; Occupational and Professional Licensing	27503	R156-60b	5YR	10/21/2004	2004-22/69
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**MASSAGE THERAPY**

Commerce; Occupational and Professional Licensing	26937	R156-47b	AMD	6/7/2004	2004-5/5
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**MEDIATION**

Commerce; Occupational and Professional Licensing	26915	R156-39a	5YR	1/27/2004	2004-4/75
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**MEDICAID**

Health; Health Care Financing, Coverage and Reimbursement Policy	26955	R414-1-5	AMD	5/19/2004	2004-6/47
	27189	R414-1-14	AMD	7/19/2004	2004-12/52
	27023	R414-1A	AMD	5/25/2004	2004-8/68
	27222	R414-1B	EMR	6/9/2004	2004-13/64
	27227	R414-1B	NEW	10/6/2004 see CPR in 09/01/2004 Bulletin	2004-13/4
	27227	R414-1B	CPR	10/6/2004	2004-17/48
	27535	R414-7A	5YR	11/8/2004	2004-23/58
	27524	R414-7B	5YR	11/3/2004	2004-23/58
	26854	R414-9	NEW	2/3/2004	2004-1/26
	27151	R414-9	NSC	6/1/2004	Not Printed
	27525	R414-11	5YR	11/3/2004	2004-23/59
	27482	R414-14	5YR	10/6/2004	2004-21/39
	27481	R414-14A	5YR	10/6/2004	2004-21/39
	27426	R414-25	REP	11/3/2004	2004-19/40
	27315	R414-26	REP	9/16/2004	2004-16/10
	27483	R414-31	5YR	10/6/2004	2004-21/40
	27327	R414-33B	NEW	10/15/2004	2004-16/12
	27323	R414-34	NEW	10/15/2004	2004-16/14
	27516	R414-35	NEW	12/16/2004	2004-22/17
	27322	R414-36	NEW	11/3/2004	2004-16/15
	26964	R414-49	AMD	5/7/2004	2004-6/48
	27176	R414-49	AMD	7/2/2004	2004-11/17
	27541	R414-49	5YR	11/12/2004	2004-23/59
	26802	R414-50	AMD	1/28/2004	2003-24/13
	27526	R414-50	5YR	11/3/2004	2004-23/60
	26782	R414-51	AMD	1/28/2004	2003-23/25
	26783	R414-53	AMD	1/28/2004	2003-23/28
	26803	R414-54	AMD	1/28/2004	2003-24/14
	27012	R414-54	5YR	3/23/2004	2004-8/94
	27366	R414-54	AMD	10/25/2004	2004-18/17
	27049	R414-55	AMD	6/17/2004	2004-8/69
	27231	R414-71	NEW	8/5/2004	2004-13/5
	27385	R414-71	NSC	9/1/2004	Not Printed
	27316	R414-90	NEW	9/16/2004	2004-16/17
	26809	R414-99	NEW	2/17/2004	2003-24/15
	27314	R414-140	NEW	9/16/2004	2004-16/19
	26811	R414-300	NEW	2/10/2004	2003-24/17
	26965	R414-305-3	AMD	5/7/2004	2004-6/50
	26810	R414-310	AMD	2/10/2004	2003-24/18
	27515	R414-310	AMD	12/16/2004	2004-22/18
	27143	R414-401	NEW	7/2/2004	2004-11/19
	27370	R414-501	5YR	8/27/2004	2004-18/82
	27371	R414-502	5YR	8/27/2004	2004-18/82
	27373	R414-503	5YR	8/27/2004	2004-18/83

	27171	R414-504	AMD	7/2/2004	2004-11/20
	27325	R414-504	AMD	9/15/2004	2004-16/20
Human Services; Recovery Services	27434	R527-201	AMD	11/30/2004	2004-20/15
<b><u>MEDICAL MALPRACTICE</u></b>					
Commerce; Occupational and Professional Licensing	27328	R156-78A-9	NSC	9/1/2004	Not Printed
<b><u>MEDICAL TRANSPORTATION</u></b>					
Health; Health Care Financing, Coverage and Reimbursement Policy	27216	R414-306	AMD	7/19/2004	2004-12/53
	27334	R414-306	NSC	11/1/2004	Not Printed
<b><u>MENTAL HEALTH</u></b>					
Commerce; Occupational and Professional Licensing	27501	R156-60	5YR	10/21/2004	2004-22/68
<b><u>METHADONE PROGRAMS</u></b>					
Human Services; Substance Abuse	27509	R544-2 (Changed to R523-21)	NSC	12/1/2004	Not Printed
<b><u>MIDWIFERY</u></b>					
Commerce; Occupational and Professional Licensing	27224	R156-44a	5YR	6/10/2004	2004-13/66
<b><u>MIGRATORY BIRDS</u></b>					
Natural Resources; Wildlife Resources	27367	R657-9	AMD	10/19/2004	2004-18/47
<b><u>MILITARY VOTER</u></b>					
Lieutenant Governor; Elections	27406	R623-4	EMR	9/10/2004	2004-19/45
<b><u>MINERALS RECLAMATION</u></b>					
Natural Resources; Oil, Gas and Mining; Non-Coal	27015	R647-1-106	AMD	6/1/2004	2004-8/74
	27016	R647-6	NEW	6/1/2004	2004-8/76
	27017	R647-7	NEW	6/1/2004	2004-8/79
	27018	R647-8	NEW	6/1/2004	2004-8/83
<b><u>MOTOR CARRIER</u></b>					
Public Safety; Highway Patrol	27100	R714-600	EXT	8/6/2004 see 5YR DAR No. 27337	Not Printed
	27337	R714-600	5YR	8/6/2004	2004-17/57
<b><u>MOTOR FUEL</u></b>					
Tax Commission; Auditing	27269	R865-13G-10	AMD	9/14/2004	2004-14/32
<b><u>MOTORCYCLE RIDER TRAINING SCHOOLS</u></b>					
Public Safety; Driver License	26918	R708-30	5YR	1/27/2004	2004-4/76
<b><u>NATURAL RESOURCES</u></b>					
Natural Resources; Forestry, Fire and State Lands	26865	R652-40-1800	AMD	2/24/2004	2004-2/2
	27070	R652-41-1300	AMD	6/4/2004	2004-9/17
<b><u>NATUROPATHIC PHYSICIAN</u></b>					
Commerce; Occupational and Professional Licensing	26998	R156-71-202	AMD	5/4/2004	2004-7/3
	27140	R156-71-202	NSC	6/1/2004	Not Printed
<b><u>NATUROPATHS</u></b>					
Commerce; Occupational and Professional Licensing	26998	R156-71-202	AMD	5/4/2004	2004-7/3
	27140	R156-71-202	NSC	6/1/2004	Not Printed
<b><u>NCLB (No Child Left Behind (Act))</u></b>					
Education; Administration	26853	R277-524	NEW	2/5/2004	2004-1/25
<b><u>NETWORK INTERCONNECTION</u></b>					
Public Service Commission; Administration	26826	R746-348-6	AMD	4/13/2004	2003-24/65
<b><u>NEWBORNS SCREENING</u></b>					
Health; Community and Family Health Services, Children with Special Health Care Needs	27443	R398-1	5YR	9/22/2004	2004-20/76

COMPLETE 2004 RULES INDEX

<b><u>NOISE</u></b>						
Transportation; Preconstruction	27156	R930-3	AMD	7/20/2004	2004-11/84	
<b><u>NOISE WALLS</u></b>						
Transportation; Preconstruction	27156	R930-3	AMD	7/20/2004	2004-11/84	
<b><u>NONPROFIT ORGANIZATION</u></b>						
Workforce Services; Workforce Information and Payment Services	27297	R994-309	5YR	7/14/2004	2004-15/66	
<b><u>NURSERIES (AGRICULTURAL)</u></b>						
Agriculture and Food; Plant Industry	27320	R68-6	AMD	9/15/2004	2004-16/5	
	27397	R68-6-5	NSC	12/1/2004	Not Printed	
<b><u>NURSES</u></b>						
Commerce; Occupational and Professional Licensing	27301	R156-31b	AMD	12/21/2004 see CPR in 11/15/2004 Bulletin	2004-15/6	
	27301	R156-31b	CPR	12/21/2004	2004-22/57	
	27567	R156-31c	5YR	11/29/2004	2004-24/66	
<b><u>NURSING FACILITY</u></b>						
Health; Health Care Financing, Coverage and Reimbursement Policy	27143	R414-401	NEW	7/2/2004	2004-11/19	
<b><u>NUTRITION</u></b>						
Education; Administration	26830	R277-720	AMD	1/15/2004	2003-24/10	
	26848	R277-720	NSC	2/1/2004	Not Printed	
<b><u>OCCUPATIONAL LICENSING</u></b>						
Commerce; Occupational and Professional Licensing	27358	R156-1	EMR	8/24/2004	2004-18/79	
	27377	R156-1	AMD	10/18/2004	2004-18/4	
	26805	R156-1-106	AMD	1/20/2004	2003-24/4	
	27103	R156-1-302	NSC	6/1/2004	Not Printed	
	27401	R156-46b	AMD	11/2/2004	2004-19/6	
	27441	R156-55a-301	NSC	10/1/2004	Not Printed	
	27112	R156-55b	AMD	6/15/2004	2004-10/6	
	27394	R156-55b-302c	NSC	12/1/2004	Not Printed	
<b><u>OCCUPATIONAL THERAPY</u></b>						
Commerce; Occupational and Professional Licensing	27400	R156-42a	5YR	9/2/2004	2004-19/48	
<b><u>OFF-HIGHWAY VEHICLES</u></b>						
Natural Resources; Parks and Recreation	27304	R651-406	AMD	10/1/2004	2004-15/51	
	27183	R651-411	NEW	7/19/2004	2004-12/61	
	27181	R651-601-17	AMD	7/19/2004	2004-12/62	
	27185	R651-615-7	AMD	7/19/2004	2004-12/65	
<b><u>OFFSET</u></b>						
Environmental Quality; Air Quality	27107	R307-420	EXT	6/8/2004 see 5YR DAR No. 27218	Not Printed	
	27218	R307-420	5YR	6/8/2004	2004-13/69	
<b><u>ONLINE TESTING</u></b>						
Education; Administration	27202	R277-402	NEW	7/16/2004	2004-12/5	
<b><u>OPERATING PERMITS</u></b>						
Environmental Quality; Air Quality	26940	R307-415	5YR	2/9/2004	2004-5/45	
	26947	R307-415-6c	AMD	8/3/2004 see CPR in 07/01/2004 Bulletin	2004-5/10	
	26947	R307-415-6c	CPR	8/3/2004	2004-13/52	
	26941	R307-417	5YR	2/9/2004	2004-5/45	
<b><u>OPERATOR CERTIFICATION</u></b>						
Environmental Quality; Water Quality	27022	R317-10	AMD	6/23/2004	2004-8/52	

**ORGAN TRANSPLANTS**

Health; Health Care Financing, Coverage and Reimbursement Policy 26935 R414-58 5YR 2/3/2004 2004-5/46

**ORTHODONTIA**

Health; Health Care Financing, Coverage and Reimbursement Policy 26782 R414-51 AMD 1/28/2004 2003-23/25

**OSTEOPATHIC PHYSICIAN**

Commerce; Occupational and Professional Licensing 26956 R156-68 AMD 4/15/2004 2004-6/2

**OSTEOPATHS**

Commerce; Occupational and Professional Licensing 26956 R156-68 AMD 4/15/2004 2004-6/2

**OVERPAYMENTS**

Workforce Services; Workforce Information and Payment Services 27583 R994-305 5YR 12/10/2004 2005-1/35  
 27237 R994-305-801 AMD 8/3/2004 2004-13/49  
 26924 R994-406 AMD 4/4/2004 2004-4/45  
 27473 R994-406-505 AMD 11/16/2004 2004-20/73

**OVERSEAS CITIZEN VOTER**

Lieutenant Governor; Elections 27406 R623-4 EMR 9/10/2004 2004-19/45

**OVERTIME**

Human Resource Management; Administration 27167 R477-8 AMD 7/2/2004 2004-11/50  
 27273 R477-8-6 NSC 7/2/2004 Not Printed

**OZONE**

Environmental Quality; Air Quality 26896 R307-110-12 AMD 5/18/2004 see 2004-3/12  
 CPR in  
 04/15/2004  
 Bulletin  
 26896 R307-110-12 CPR 5/18/2004 2004-8/87  
 26983 R307-110-12 NSC 5/18/2004 Not Printed  
 27295 R307-110-12 AMD 12/2/2004 see 2004-15/23  
 CPR in  
 11/01/2004  
 Bulletin  
 27295 R307-110-12 CPR 12/2/2004 2004-21/34  
 26946 R307-110-28 AMD 6/8/2004 2004-5/9  
 26898 R307-110-31 AMD 5/18/2004 see 2004-3/13  
 CPR in  
 04/15/2004  
 Bulletin  
 26898 R307-110-31 CPR 5/18/2004 2004-8/87  
 27296 R307-110-33 AMD 10/7/2004 2004-15/24  
 26899 R307-110-34 AMD 5/18/2004 see 2004-3/14  
 CPR in  
 04/15/2004  
 Bulletin  
 26899 R307-110-34 CPR 5/18/2004 2004-8/88  
 27344 R307-110-35 AMD 11/4/2004 2004-17/13  
 26897 R307-301 AMD 5/18/2004 2004-3/15  
 27487 R307-326-7 NSC 12/1/2004 Not Printed  
 27144 R307-343 EXT 6/8/2004 see Not Printed  
 5YR DAR No.  
 27219  
 27219 R307-343 5YR 6/8/2004 2004-13/69  
 27107 R307-420 EXT 6/8/2004 see Not Printed  
 5YR DAR No.  
 27218  
 27218 R307-420 5YR 6/8/2004 2004-13/69

**PALEONTOLOGICAL RESOURCES**

Regents (Board Of); University of Utah, Museum of Natural History (Utah) 26913 R807-1 5YR 1/26/2004 2004-4/77

**PARAPROFESSIONAL QUALIFICATIONS**

Education; Administration 26853 R277-524 NEW 2/5/2004 2004-1/25

**PARENTAL RIGHTS**

Human Services; Administration 26936 R495-882 NEW 6/29/2004 2004-5/13

**PARKS**

Natural Resources; Parks and Recreation 27153 R651-407 AMD 7/5/2004 2004-11/71  
 27183 R651-411 NEW 7/19/2004 2004-12/61  
 27181 R651-601-17 AMD 7/19/2004 2004-12/62  
 26776 R651-611 AMD 1/6/2004 2003-23/52  
 26948 R651-611 AMD 4/1/2004 2004-5/29  
 27184 R651-611 AMD 7/19/2004 2004-12/62  
 27305 R651-611 AMD 9/1/2004 2004-15/52  
 27185 R651-615-7 AMD 7/19/2004 2004-12/65  
 27154 R651-619-2 AMD 7/5/2004 2004-11/72  
 27442 R651-620 AMD 11/16/2004 2004-20/32  
 27152 R651-626 AMD 7/5/2004 2004-11/73  
 27139 R651-633 5YR 5/3/2004 2004-11/91  
 27306 R651-634-1 AMD 9/1/2004 2004-15/54

**PAROLE**

Human Services; Youth Corrections 27264 R547-6 NSC 7/1/2004 Not Printed

**PARTICULATE MATTER**

Environmental Quality; Air Quality 26896 R307-110-12 AMD 5/18/2004 see 2004-3/12  
 CPR in  
 04/15/2004  
 Bulletin  
 26896 R307-110-12 CPR 5/18/2004 2004-8/87  
 26983 R307-110-12 NSC 5/18/2004 Not Printed  
 27295 R307-110-12 AMD 12/2/2004 see 2004-15/23  
 CPR in  
 11/01/2004  
 Bulletin  
 27295 R307-110-12 CPR 12/2/2004 2004-21/34  
 26946 R307-110-28 AMD 6/8/2004 2004-5/9  
 26898 R307-110-31 AMD 5/18/2004 see 2004-3/13  
 CPR in  
 04/15/2004  
 Bulletin  
 26898 R307-110-31 CPR 5/18/2004 2004-8/87  
 27296 R307-110-33 AMD 10/7/2004 2004-15/24  
 26899 R307-110-34 AMD 5/18/2004 see 2004-3/14  
 CPR in  
 04/15/2004  
 Bulletin  
 26899 R307-110-34 CPR 5/18/2004 2004-8/88  
 27344 R307-110-35 AMD 11/4/2004 2004-17/13  
 26897 R307-301 AMD 5/18/2004 2004-3/15

**PEDESTRIANS**

Regents (Board Of); University of Utah, Administration 26914 R805-1 5YR 1/27/2004 2004-4/76

**PEER REVIEW**

Commerce; Occupational and Professional Licensing 26786 R156-26a-303b AMD 1/6/2004 2003-23/7  
 27019 R156-26a-303b AMD 5/24/2004 2004-8/32

**PENALTIES**

Labor Commission; Industrial Accidents 27595 R612-9 5YR 12/17/2004 2005-2/169

**PER DIEM ALLOWANCES**

Administrative Services; Finance 27120 R25-7 AMD 7/1/2004 2004-10/4  
 27164 R25-7-6 AMD 7/2/2004 2004-11/4

**PERMITS**

Natural Resources; Wildlife Resources	26820	R657-42	AMD	1/21/2004	2003-24/61
	27239	R657-42	AMD	8/3/2004	2004-13/41
	27240	R657-50	AMD	8/3/2004	2004-13/44
Transportation; Motor Carrier, Ports of Entry	26881	R912-14	5YR	1/5/2004	2004-3/51

**PERMITTING AUTHORITY**

Environmental Quality; Air Quality	26941	R307-417	5YR	2/9/2004	2004-5/45
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**PERSONAL PROPERTY**

Tax Commission; Property Tax	26910	R884-24P-24	NSC	1/27/2004	Not Printed
	27190	R884-24P-24	AMD	8/2/2004	2004-12/66
	27382	R884-24P-24	AMD	10/19/2004	2004-18/64
	27353	R884-24P-33	AMD	10/19/2004	2004-17/37
	27513	R884-24P-53	AMD	12/21/2004	2004-22/51

**PERSONNEL MANAGEMENT**

Human Resource Management; Administration	27160	R477-1	AMD	7/2/2004	2004-11/23
	27172	R477-5	NSC	7/1/2004	Not Printed
	27165	R477-6	AMD	7/2/2004	2004-11/37
	27168	R477-9	AMD	7/2/2004	2004-11/53
	27170	R477-12	AMD	7/2/2004	2004-11/57
	27174	R477-14	NSC	6/1/2004	Not Printed

**PETROLEUM**

Environmental Quality; Environmental Response and Remediation	27194	R311-200	AMD	9/9/2004	2004-12/27
	27195	R311-201	AMD	9/9/2004	2004-12/30
	27196	R311-203	AMD	9/9/2004	2004-12/34
	27197	R311-204	AMD	9/9/2004	2004-12/37
	27198	R311-205	AMD	9/9/2004	2004-12/39
	27199	R311-206	AMD	9/9/2004	2004-12/44
	27200	R311-212	AMD	9/9/2004	2004-12/48

**PHARMACIES**

Commerce; Occupational and Professional Licensing	26754	R156-17a-612	AMD	2/19/2004 see CPR in 01/15/2004 Bulletin	2003-22/11
	26754	R156-17a-612	CPR	2/19/2004	2004-2/10

**PHARMACISTS**

Commerce; Occupational and Professional Licensing	26754	R156-17a-612	AMD	2/19/2004 see CPR in 01/15/2004 Bulletin	2003-22/11
	26754	R156-17a-612	CPR	2/19/2004	2004-2/10

**PHYSICIANS**

Health; Health Care Financing, Coverage and Reimbursement Policy	27222	R414-1B	EMR	6/9/2004	2004-13/64
	27227	R414-1B	NEW	10/6/2004 see CPR in 09/01/2004 Bulletin	2004-13/4
	27227	R414-1B	CPR	10/6/2004	2004-17/48

**PLANNING**

Administrative Services; Facilities Construction and Management	27313	R23-3	5YR	7/28/2004	2004-16/33
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**PODIATRIC PHYSICIAN**

Commerce; Occupational and Professional Licensing	26917	R156-5a	5YR	1/27/2004	2004-4/74
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**PODIATRISTS**

Commerce; Occupational and Professional Licensing	26917	R156-5a	5YR	1/27/2004	2004-4/74
---	-------	---------	-----	-----------	-----------

COMPLETE 2004 RULES INDEX

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**POINT-SYSTEM**

Public Safety; Driver License	27142	R708-3	EMR	5/5/2004	2004-11/88
	27251	R708-3	AMD	8/17/2004	2004-14/30

**POSITION CLASSIFICATIONS**

Human Resource Management; Administration	27162	R477-3	AMD	7/2/2004	2004-11/32
---	-------	--------	-----	----------	------------

**POSTSECONDARY SCHOOL**

Commerce; Consumer Protection	26905	R152-34	AMD	5/20/2004	2004-4/2
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**PRECURSOR**

Commerce; Occupational and Professional Licensing	26916	R156-37c	5YR	1/27/2004	2004-4/74
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**PRELITIGATION**

Commerce; Occupational and Professional Licensing	27328	R156-78A-9	NSC	9/1/2004	Not Printed
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**PRIMARY CARE**

Health; Health Care Financing, Coverage and Reimbursement Policy	26810	R414-310	AMD	2/10/2004	2003-24/18
	27515	R414-310	AMD	12/16/2004	2004-22/18

**PRIMARY CARE NETWORK**

Health; Health Care Financing, Coverage and Reimbursement Policy	26811	R414-300	NEW	2/10/2004	2003-24/17
--	-------	----------	-----	-----------	------------

**PRIVATE SECURITY OFFICERS**

Commerce; Occupational and Professional Licensing	26888	R156-63	AMD	3/4/2004	2004-3/5
---	-------	---------	-----	----------	----------

**PROCUREMENT**

Administrative Services; Facilities Construction and Management	27608	R23-2	5YR	12/23/2004	2005-2/168
	27313	R23-3	5YR	7/28/2004	2004-16/33

**PROFESSIONAL COMPETENCY**

Education; Administration	26827	R277-502	AMD	1/15/2004	2003-24/6
	27207	R277-502	AMD	7/16/2004	2004-12/14
	27448	R277-502	NSC	12/1/2004	Not Printed
	27208	R277-510	REP	7/16/2004	2004-12/18
	27213	R277-511	REP	7/16/2004	2004-12/19
	27209	R277-512	REP	7/16/2004	2004-12/20
	26981	R277-514	AMD	4/15/2004	2004-6/10

**PROFESSIONAL DEVELOPMENT DAYS**

Education; Administration	27203	R277-418	NEW	7/16/2004	2004-12/7
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**PROFESSIONAL EDUCATION**

Education; Administration	27410	R277-504	5YR	9/7/2004	2004-19/50
	27000	R277-518	AMD	5/5/2004	2004-7/8

**PROFESSIONAL GEOLOGISTS**

Commerce; Occupational and Professional Licensing	26777	R156-76-102	AMD	1/20/2004	2003-23/14
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**PROFESSIONAL STAFF**

Education; Administration	26828	R277-486	NEW	1/15/2004	2003-24/5
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**PROGRAM BENEFITS**

Health; Health Care Financing, Coverage and Reimbursement Policy	27216	R414-306	AMD	7/19/2004	2004-12/53
	27334	R414-306	NSC	11/1/2004	Not Printed

**PROHIBITED DEVICES**

Human Services; Youth Corrections	27267	R547-14	NSC	7/1/2004	Not Printed
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**PROHIBITED ITEMS**

Human Services; Youth Corrections	27267	R547-14	NSC	7/1/2004	Not Printed
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**PROHIBITED ITEMS AND DEVICES**

Human Services; Mental Health	27258	R523-1	NSC	7/1/2004	Not Printed
	27117	R523-1-10	AMD	6/17/2004	2004-10/21
	27118	R523-1-16	AMD	6/17/2004	2004-10/23
	27257	R523-1-22	AMD	8/17/2004	2004-14/25
Human Services; Youth Corrections	27261	R547-1	NSC	7/1/2004	Not Printed

**PROPERTY CASUALTY INSURANCE FILING**

Insurance; Administration	26821	R590-225	NEW	3/24/2004 see CPR in 02/15/2004 Bulletin	2003-24/38
	26821	R590-225	CPR	3/24/2004	2004-4/64

**PROPERTY TAX**

Tax Commission; Property Tax	26910	R884-24P-24	NSC	1/27/2004	Not Printed
	27190	R884-24P-24	AMD	8/2/2004	2004-12/66
	27382	R884-24P-24	AMD	10/19/2004	2004-18/64
	27353	R884-24P-33	AMD	10/19/2004	2004-17/37
	27513	R884-24P-53	AMD	12/21/2004	2004-22/51

**PROSECUTION**

Workforce Services; Workforce Information and Payment Services	26923	R994-104	REP	4/4/2004	2004-4/41
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**PSYCHOLOGISTS**

Commerce; Occupational and Professional Licensing	27225	R156-61	5YR	6/10/2004	2004-13/67
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**PUBLIC BUILDINGS**

Administrative Services; Facilities Construction and Management	27313	R23-3	5YR	7/28/2004	2004-16/33
Public Safety; Fire Marshal	26793	R710-4	AMD	1/2/2004	2003-23/67
	26920	R710-4	EMR	1/28/2004	2004-4/66
	27003	R710-4	AMD	5/5/2004	2004-7/19

**PUBLIC EDUCATION**

Education; Administration	27214	R277-105	5YR	6/1/2004	2004-12/79
	26871	R277-437	5YR	1/5/2004	2004-3/42
	27205	R277-438	5YR	6/1/2004	2004-12/79
	26850	R277-462	AMD	2/5/2004	2004-1/16
	27408	R277-462	5YR	9/7/2004	2004-19/49
	27412	R277-714	5YR	9/7/2004	2004-19/51
	26870	R277-735	5YR	1/5/2004	2004-3/43

**PUBLIC FUNDS**

Money Management Council; Administration	26676	R628-19	NEW	2/10/2004 see CPR in 01/01/2004 Bulletin	2003-20/27
	26676	R628-19	CPR	2/10/2004	2004-1/38

**PUBLIC HEALTH**

Health; Epidemiology and Laboratory Services, Environmental Services	27187	R392-101	5YR	5/24/2004	2004-12/80
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**PUBLIC INFORMATION**

Administrative Services; Administration	27495	R13-2	AMD	12/21/2004	2004-21/5
Human Resource Management; Administration	27161	R477-2	AMD	7/2/2004	2004-11/29

**PUBLIC INPUT IN POLICY**

Human Services; Child and Family Services	26774	R512-3	EXT	3/4/2004 see EXD DAR No. 27014	Not Printed
	27014	R512-3	EXD	3/4/2004	Not Printed

**PUBLIC LIBRARY**

Community and Economic Development; Community Development, Library	27125	R223-2-2	AMD	9/8/2004	2004-10/17
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**PUBLIC SCHOOLS**

Education; Administration	27409	R277-463	5YR	9/7/2004	2004-19/49
	27212	R277-916	5YR	6/1/2004	2004-12/80

**PUBLIC UTILITIES**

Public Service Commission; Administration	26849	R746-100	AMD	4/1/2004 see CPR in 03/01/2004 Bulletin	2004-1/28
	26849	R746-100	CPR	4/1/2004	2004-5/36
	26883	R746-365	5YR	1/6/2004	2004-3/49
	27585	R746-401	5YR	12/13/2004	2005-1/35

**RABBITS**

Natural Resources; Wildlife Resources	27283	R657-6	AMD	9/1/2004	2004-15/55
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**RADIATION**

Environmental Quality; Radiation Control	27110	R313-25-25	NSC	5/1/2004	Not Printed
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**RADIOACTIVE WASTE DISPOSAL**

Environmental Quality; Radiation Control	27110	R313-25-25	NSC	5/1/2004	Not Printed
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**RADIOLOGY PRACTICAL TECHNICIANS**

Commerce; Occupational and Professional Licensing	26580	R156-54-302b	AMD	1/20/2004 see CPR in 12/15/2003 Bulletin	2003-18/4
	26580	R156-54-302b	CPR	1/20/2004	2003-24/70

**RADIOLOGY TECHNOLOGISTS**

Commerce; Occupational and Professional Licensing	26580	R156-54-302b	AMD	1/20/2004 see CPR in 12/15/2003 Bulletin	2003-18/4
	26580	R156-54-302b	CPR	1/20/2004	2003-24/70

**RATES**

Labor Commission; Industrial Accidents	27493	R612-4-2	AMD	12/2/2004	2004-21/19
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**REAL ESTATE APPRAISALS**

Commerce; Real Estate	27132	R162-101-2	AMD	9/10/2004	2004-10/10
	27241	R162-103	AMD	10/7/2004	2004-14/2
	27349	R162-103	AMD	11/24/2004	2004-17/7
	27350	R162-104	AMD	11/24/2004	2004-17/9
	26890	R162-105	5YR	1/13/2004	2004-3/42
	27131	R162-105	AMD	9/10/2004	2004-10/11
	27098	R162-106-8	AMD	7/28/2004	2004-9/11
	27128	R162-107	AMD	9/10/2004	2004-10/13

**REAL ESTATE BROKERS**

Commerce; Real Estate	26835	R162-7-3	AMD	2/18/2004	2004-1/9
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**REAL ESTATE BUSINESS**

Commerce; Real Estate	27026	R162-3	AMD	5/20/2004	2004-8/44
	26944	R162-6-2	AMD	4/21/2004	2004-5/6
	27009	R162-6-2	NSC	4/21/2004	Not Printed
	27338	R162-8	AMD	10/21/2004	2004-17/3

**RECLAMATION**

Natural Resources; Oil, Gas and Mining; Coal	26710	R645-301-100	AMD	2/6/2004	2003-22/34
	26711	R645-301-500	AMD	2/6/2004	2003-22/35
	26712	R645-303-200	AMD	2/6/2004	2003-22/36
	26713	R645-401	AMD	2/6/2004	2003-22/38

**RECORDS APPEAL HEARINGS**

Administrative Services; Records Committee	26973	R35-1	EXT	7/2/2004 see 5YR DAR No. 27277	Not Printed
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	27277	R35-1	5YR	7/2/2004	2004-15/62
	27278	R35-2	5YR	7/2/2004	2004-15/62
	27279	R35-3	5YR	7/2/2004	2004-15/63
	27280	R35-4	5YR	7/2/2004	2004-15/63
	27281	R35-5	5YR	7/2/2004	2004-15/64
	27282	R35-6	5YR	7/2/2004	2004-15/64
<b>RECREATION</b>					
Natural Resources; Wildlife Resources	26819	R657-38	AMD	1/21/2004	2003-24/56
<b>REEMPLOYMENT WORKERS' COMPENSATION GUIDELINES</b>					
Labor Commission; Industrial Accidents	27459	R612-8	5YR	9/30/2004	2004-20/85
<b>REFINERY</b>					
Environmental Quality; Air Quality	27487	R307-326-7	NSC	12/1/2004	Not Printed
<b>REGISTRATION</b>					
Commerce; Consumer Protection	26905	R152-34	AMD	5/20/2004	2004-4/2
Lieutenant Governor; Elections	27381	R623-1	AMD	10/19/2004	2004-18/28
Workforce Services; Workforce Information and Payment Services	27471	R994-403	R&R	11/16/2004	2004-20/47
<b>REHABILITATION</b>					
Education; Rehabilitation	26873	R280-202	5YR	1/5/2004	2004-3/44
<b>REIMBURSEMENT</b>					
Corrections; Administration	27416	R251-113	AMD	11/9/2004	2004-19/28
Health; Health Care Financing, Coverage and Reimbursement Policy	26854	R414-9	NEW	2/3/2004	2004-1/26
	27151	R414-9	NSC	6/1/2004	Not Printed
<b>RELIGIOUS ACTIVITIES</b>					
Tax Commission; Auditing	27063	R865-19S-1	AMD	6/29/2004	2004-9/27
	27226	R865-19S-7	AMD	9/14/2004	2004-13/48
	27064	R865-19S-12	AMD	6/29/2004	2004-9/28
	27068	R865-19S-23	AMD	6/29/2004	2004-9/30
	27071	R865-19S-28	AMD	6/29/2004	2004-9/31
	27072	R865-19S-30	AMD	6/29/2004	2004-9/32
	27383	R865-19S-38	AMD	10/19/2004	2004-18/62
	27095	R865-19S-45	AMD	6/29/2004	2004-9/34
	27384	R865-19S-49	AMD	10/19/2004	2004-18/63
	27080	R865-19S-58	AMD	6/29/2004	2004-9/37
	27053	R865-19S-70	AMD	6/29/2004	2004-9/40
	27074	R865-19S-86	AMD	6/29/2004	2004-9/45
	27085	R865-19S-92	AMD	6/29/2004	2004-9/47
	27086	R865-19S-98	AMD	6/29/2004	2004-9/48
	27088	R865-19S-107	AMD	6/29/2004	2004-9/50
	27090	R865-19S-114	AMD	6/29/2004	2004-9/52
	27091	R865-19S-115	AMD	6/29/2004	2004-9/53
	27097	R865-19S-116	AMD	6/29/2004	2004-9/54
	27096	R865-19S-117	AMD	6/29/2004	2004-9/54
	27099	R865-19S-118	AMD	6/29/2004	2004-9/55
	27485	R865-19S-119	AMD	12/21/2004	2004-21/30
<b>REPLACEMENT PROVIDERS</b>					
Public Service Commission; Administration	26785	R746-350	NEW	1/15/2004	2003-23/79
	26901	R746-350	NSC	3/1/2004	Not Printed
<b>REPORTING</b>					
Education; Administration	27409	R277-463	5YR	9/7/2004	2004-19/49
Lieutenant Governor; Elections	27381	R623-1	AMD	10/19/2004	2004-18/28
<b>REPORTING REQUIREMENTS AND PROCEDURES</b>					
Health; Community and Family Health Services, Chronic Disease	27235	R384-100	5YR	6/15/2004	2004-13/70
<b>REPORTS</b>					
Environmental Quality; Air Quality	26942	R307-150	5YR	2/9/2004	2004-5/43



**SALES TAX**

Tax Commission; Auditing	27056	R865-12L-7	AMD	6/29/2004	2004-9/20
	27060	R865-12L-15	AMD	6/29/2004	2004-9/24
	27061	R865-12L-16	AMD	6/29/2004	2004-9/25
	27062	R865-12L-17	AMD	6/29/2004	2004-9/26
	27063	R865-19S-1	AMD	6/29/2004	2004-9/27
	27226	R865-19S-7	AMD	9/14/2004	2004-13/48
	27064	R865-19S-12	AMD	6/29/2004	2004-9/28
	27068	R865-19S-23	AMD	6/29/2004	2004-9/30
	27071	R865-19S-28	AMD	6/29/2004	2004-9/31
	27072	R865-19S-30	AMD	6/29/2004	2004-9/32
	27383	R865-19S-38	AMD	10/19/2004	2004-18/62
	27095	R865-19S-45	AMD	6/29/2004	2004-9/34
	27384	R865-19S-49	AMD	10/19/2004	2004-18/63
	27080	R865-19S-58	AMD	6/29/2004	2004-9/37
	27053	R865-19S-70	AMD	6/29/2004	2004-9/40
	27074	R865-19S-86	AMD	6/29/2004	2004-9/45
	27085	R865-19S-92	AMD	6/29/2004	2004-9/47
	27086	R865-19S-98	AMD	6/29/2004	2004-9/48
	27088	R865-19S-107	AMD	6/29/2004	2004-9/50
	27090	R865-19S-114	AMD	6/29/2004	2004-9/52
	27091	R865-19S-115	AMD	6/29/2004	2004-9/53
	27097	R865-19S-116	AMD	6/29/2004	2004-9/54
	27096	R865-19S-117	AMD	6/29/2004	2004-9/54
	27099	R865-19S-118	AMD	6/29/2004	2004-9/55
	27485	R865-19S-119	AMD	12/21/2004	2004-21/30

**SCHOOL BUSES**

Transportation; Motor Carrier	26880	R909-3	5YR	1/5/2004	2004-3/50
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**SCHOOL LUNCH PROGRAM**

Education; Administration	26830	R277-720	AMD	1/15/2004	2003-24/10
	26848	R277-720	NSC	2/1/2004	Not Printed

**SCHOOL PERSONNEL**

Education; Administration	27213	R277-511	REP	7/16/2004	2004-12/19
	27209	R277-512	REP	7/16/2004	2004-12/20

**SCHOOL TRANSPORTATION**

Education; Administration	26961	R277-601	5YR	2/26/2004	2004-6/59
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**SCHOOLS**

Education; Administration	26961	R277-601	5YR	2/26/2004	2004-6/59
Public Safety; Driver License	26894	R708-2	AMD	3/4/2004	2004-3/27
	27245	R708-2	EMR	7/1/2004	2004-14/52
	27246	R708-2	AMD	8/17/2004	2004-14/27

**SCIENCE**

Education; Administration	26979	R277-444	AMD	4/15/2004	2004-6/4
	27271	R277-444	AMD	8/17/2004	2004-14/4

**SDWA (Safe Drinking Water Act)**

Environmental Quality; Drinking Water	26975	R309-705	AMD	8/6/2004 see CPR in 07/01/2004 Bulletin	2004-6/39
	26975	R309-705	CPR	8/6/2004	2004-13/57

**SEARCH AND RESCUE**

Public Safety; Comprehensive Emergency Management	27336	R704-1	5YR	8/6/2004	2004-17/56
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**SEARCH EXPENSES**

Public Safety; Comprehensive Emergency Management	27336	R704-1	5YR	8/6/2004	2004-17/56
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**SECURITIES**

Money Management Council; Administration	26676	R628-19	NEW	2/10/2004 see CPR in 01/01/2004 Bulletin	2003-20/27
	26676	R628-19	CPR	2/10/2004	2004-1/38

**SECURITIES REGULATION**

Commerce; Securities	26481	R164-11-2	AMD	1/5/2004 see CPR in 12/01/2003 Bulletin	2003-15/17
	26481	R164-11-2	CPR	1/5/2004	2003-23/83

**SECURITY GUARDS**

Commerce; Occupational and Professional Licensing	26888	R156-63	AMD	3/4/2004	2004-3/5
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**SENIOR PROTECTION**

Insurance; Administration	27083	R590-230	NEW	6/3/2004	2004-9/14
	27339	R590-230-5	NSC	9/1/2004	Not Printed

**SERVER TRAINING**

Human Services; Substance Abuse	27512	R544-5 (Changed to R523-23)	NSC	12/1/2004	Not Printed
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**SERVICES**

Public Service Commission; Administration	26785	R746-350	NEW	1/15/2004	2003-23/79
	26901	R746-350	NSC	3/1/2004	Not Printed

**SETTLEMENTS**

Labor Commission; Adjudication	26773	R602-2-1	AMD	1/2/2004	2003-23/47
	27492	R602-2-4	AMD	12/2/2004	2004-21/17

**SHORTHAND REPORTER**

Commerce; Occupational and Professional Licensing	26927	R156-74	5YR	2/2/2004	2004-4/75
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**SIGNS**

Transportation; Preconstruction, Right-of-Way Acquisition	26892	R933-2-3	EMR	1/14/2004	2004-3/39
	26893	R933-2-3	AMD	3/23/2004	2004-3/37

**SLCC (Salt Lake Community College)**

Regents (Board Of); Salt Lake Community College	26994	R784-1	5YR	3/12/2004	2004-7/36
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**SMALL BUSINESS ASSISTANCE PROGRAM**

Environmental Quality; Air Quality	26896	R307-110-12	AMD	5/18/2004 see CPR in 04/15/2004 Bulletin	2004-3/12
	26896	R307-110-12	CPR	5/18/2004	2004-8/87
	26983	R307-110-12	NSC	5/18/2004	Not Printed
	27295	R307-110-12	AMD	12/2/2004 see CPR in 11/01/2004 Bulletin	2004-15/23
	27295	R307-110-12	CPR	12/2/2004	2004-21/34
	26898	R307-110-31	AMD	5/18/2004 see CPR in 04/15/2004 Bulletin	2004-3/13
	26898	R307-110-31	CPR	5/18/2004	2004-8/87
	27296	R307-110-33	AMD	10/7/2004	2004-15/24
	26899	R307-110-34	AMD	5/18/2004 see CPR in 04/15/2004 Bulletin	2004-3/14
	26899	R307-110-34	CPR	5/18/2004	2004-8/88
	27344	R307-110-35	AMD	11/4/2004	2004-17/13
	26897	R307-301	AMD	5/18/2004	2004-3/15

**SOCIAL SERVICES**

Human Services; Administration, Administrative Hearings	27254	R497-100	NSC	7/1/2004	Not Printed
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**SOCIAL WORKERS**

Commerce; Occupational and Professional Licensing	27285	R156-60a	AMD	9/1/2004	2004-15/17
	27502	R156-60a	5YR	10/21/2004	2004-22/68

**SOLID WASTE MANAGEMENT**

Environmental Quality; Solid and Hazardous Waste 27288 R315-317-2 AMD 9/15/2004 2004-15/36  
26972 R315-320 5YR 3/1/2004 2004-6/61

**SOURCE DEVELOPMENT**

Environmental Quality; Drinking Water 26971 R309-204 AMD 4/21/2004 2004-6/23  
(Changed to R309-515)

**SOURCE MAINTENANCE**

Environmental Quality; Drinking Water 26971 R309-204 AMD 4/21/2004 2004-6/23  
(Changed to R309-515)

**SPECIAL FUEL**

Tax Commission; Auditing 27389 R865-4D-24 AMD 10/19/2004 2004-18/57

**SPEED LIMITS**

Regents (Board Of); University of Utah, Administration 26914 R805-1 5YR 1/27/2004 2004-4/76

**STATE ASSISTED LOANS**

Environmental Quality; Water Quality 27179 R317-100-3 AMD 8/20/2004 2004-11/15

**STATE CUSTODY**

Human Services; Administration 26936 R495-882 NEW 6/29/2004 2004-5/13

**STATE EMPLOYEES**

Administrative Services; Finance 27120 R25-7 AMD 7/1/2004 2004-10/4  
27164 R25-7-6 AMD 7/2/2004 2004-11/4  
Human Resource Management; Administration 27172 R477-5 NSC 7/1/2004 Not Printed

**STATE FLAG**

Lieutenant Governor; Administration 27221 R622-2 5YR 6/9/2004 2004-13/71

**STATE PLAN**

Lieutenant Governor; Elections 27127 R623-3 NEW 6/16/2004 2004-10/27  
27414 R623-3 NSC 11/15/2004 Not Printed  
27537 R623-3 NSC 11/15/2004 Not Printed

**STATE PROPERTY**

Administrative Services; Fleet Operations, Surplus Property 27440 R28-1 AMD 11/17/2004 2004-20/7

**STATE RECORDS COMMITTEE**

Administrative Services; Records Committee 26973 R35-1 EXT 7/2/2004 see Not Printed  
5YR DAR No. 27277  
27277 R35-1 5YR 7/2/2004 2004-15/62  
27278 R35-2 5YR 7/2/2004 2004-15/62  
27279 R35-3 5YR 7/2/2004 2004-15/63  
27280 R35-4 5YR 7/2/2004 2004-15/63  
27281 R35-5 5YR 7/2/2004 2004-15/64  
27282 R35-6 5YR 7/2/2004 2004-15/64

**STATE VEHICLE USE**

Administrative Services; Fleet Operations 27510 R27-3 AMD 12/20/2004 2004-22/10

**STREAM ALTERATIONS**

Natural Resources; Water Rights 26814 R655-13 NEW 3/25/2004 2003-24/43  
26884 R655-13 NSC 3/25/2004 Not Printed  
26984 R655-13 AMD 5/4/2004 2004-7/16  
27005 R655-13 NSC 6/1/2004 Not Printed

**STUDENT ELIGIBILITY**

Workforce Services; Workforce Information and Payment Services 27471 R994-403 R&R 11/16/2004 2004-20/47

**STUDENT LOANS**

Regents (Board Of); Administration 27387 R765-612 AMD 10/19/2004 2004-18/56

COMPLETE 2004 RULES INDEX

**SUBSTANCE ABUSE**

Human Services; Substance Abuse	27508	R544-1 (Changed to R523-20)	NSC	12/1/2004	Not Printed
	27512	R544-5 (Changed to R523-23)	NSC	12/1/2004	Not Printed

**SURPLUS PROPERTY**

Administrative Services; Fleet Operations, Surplus Property	26843	R28-3	AMD	2/12/2004	2004-1/4
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**SURVEYS**

Natural Resources; Forestry, Fire and State Lands	26865	R652-40-1800	AMD	2/24/2004	2004-2/2
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**SUSPENSION**

Natural Resources; Wildlife Resources	27497	R657-26-5	AMD	12/2/2004	2004-21/21
Transportation; Administration	26720	R907-67	NEW	1/5/2004	2003-22/50

**SYSTEMS**

Public Safety; Fire Marshal	27480	R710-7-7	AMD	12/2/2004	2004-21/28
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**TAX EXEMPTIONS**

Tax Commission; Auditing	27063	R865-19S-1	AMD	6/29/2004	2004-9/27
	27226	R865-19S-7	AMD	9/14/2004	2004-13/48
	27064	R865-19S-12	AMD	6/29/2004	2004-9/28
	27068	R865-19S-23	AMD	6/29/2004	2004-9/30
	27071	R865-19S-28	AMD	6/29/2004	2004-9/31
	27072	R865-19S-30	AMD	6/29/2004	2004-9/32
	27383	R865-19S-38	AMD	10/19/2004	2004-18/62
	27095	R865-19S-45	AMD	6/29/2004	2004-9/34
	27384	R865-19S-49	AMD	10/19/2004	2004-18/63
	27080	R865-19S-58	AMD	6/29/2004	2004-9/37
	27053	R865-19S-70	AMD	6/29/2004	2004-9/40
	27074	R865-19S-86	AMD	6/29/2004	2004-9/45
	27085	R865-19S-92	AMD	6/29/2004	2004-9/47
	27086	R865-19S-98	AMD	6/29/2004	2004-9/48
	27088	R865-19S-107	AMD	6/29/2004	2004-9/50
	27090	R865-19S-114	AMD	6/29/2004	2004-9/52
	27091	R865-19S-115	AMD	6/29/2004	2004-9/53
	27097	R865-19S-116	AMD	6/29/2004	2004-9/54
	27096	R865-19S-117	AMD	6/29/2004	2004-9/54
	27099	R865-19S-118	AMD	6/29/2004	2004-9/55
	27485	R865-19S-119	AMD	12/21/2004	2004-21/30

**TAX RETURNS**

Tax Commission; Auditing	27093	R865-9I-38	AMD	6/29/2004	2004-9/18
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**TAXATION**

Tax Commission; Administration	27268	R861-1A-16	NSC	7/1/2004	Not Printed
	27155	R861-1A-37	AMD	8/2/2004	2004-11/83
	27354	R861-1A-37	AMD	10/19/2004	2004-17/36
	27236	R861-1A-38	AMD	9/14/2004	2004-13/47
Tax Commission; Auditing	27389	R865-4D-24	AMD	10/19/2004	2004-18/57
	27388	R865-6F-8	AMD	10/19/2004	2004-18/58
	27386	R865-6F-36	AMD	10/19/2004	2004-18/61
	26957	R865-7H	5YR	2/25/2004	2004-6/63
	27056	R865-12L-7	AMD	6/29/2004	2004-9/20
	27060	R865-12L-15	AMD	6/29/2004	2004-9/24
	27061	R865-12L-16	AMD	6/29/2004	2004-9/25
	27062	R865-12L-17	AMD	6/29/2004	2004-9/26
	27269	R865-13G-10	AMD	9/14/2004	2004-14/32
	27092	R865-21U-1	AMD	6/29/2004	2004-9/56
	27078	R865-21U-12	AMD	6/29/2004	2004-9/58
Tax Commission; Property Tax	26910	R884-24P-24	NSC	1/27/2004	Not Printed
	27190	R884-24P-24	AMD	8/2/2004	2004-12/66
	27382	R884-24P-24	AMD	10/19/2004	2004-18/64
	27353	R884-24P-33	AMD	10/19/2004	2004-17/37
	27513	R884-24P-53	AMD	12/21/2004	2004-22/51

**TEACHER CERTIFICATION**

Education; Administration	27410	R277-504	5YR	9/7/2004	2004-19/50
	27208	R277-510	REP	7/16/2004	2004-12/18
	27209	R277-512	REP	7/16/2004	2004-12/20

**TEACHERS**

Education; Administration	27270	R277-503	AMD	8/17/2004	2004-14/6
	27357	R277-503	NSC	9/1/2004	Not Printed
	27211	R277-522	AMD	7/16/2004	2004-12/24

**TECHNOLOGY BEST PRACTICES**

Governor; Planning and Budget, Chief Information Officer	27398	R365-10	NEW	11/8/2004	2004-19/38
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**TELECOMMUNICATIONS**

Public Service Commission; Administration	26826	R746-348-6	AMD	4/13/2004	2003-24/65
	26785	R746-350	NEW	1/15/2004	2003-23/79
	26901	R746-350	NSC	3/1/2004	Not Printed
	26883	R746-365	5YR	1/6/2004	2004-3/49

**TELECOMMUTING**

Human Resource Management; Administration	27167	R477-8	AMD	7/2/2004	2004-11/50
	27273	R477-8-6	NSC	7/2/2004	Not Printed

**TELEPHONE UTILITY REGULATION**

Public Service Commission; Administration	26826	R746-348-6	AMD	4/13/2004	2003-24/65
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**TEXTBOOKS**

Education; Administration	27308	R277-408	REP	9/2/2004	2004-15/18
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**THERAPISTS**

Commerce; Occupational and Professional Licensing	27501	R156-60	5YR	10/21/2004	2004-22/68
	27503	R156-60b	5YR	10/21/2004	2004-22/69

**TIMBER**

School and Institutional Trust Lands; Administration	27178	R850-70	AMD	7/2/2004	2004-11/80
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**TIME**

Labor Commission; Adjudication	26772	R602-1	AMD	1/2/2004	2003-23/46
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**TITLE INSURANCE**

Insurance; Administration	26791	R590-153	AMD	5/13/2004 see CPR in 04/01/2004 Bulletin	2003-23/41
	26791	R590-153	CPR	5/13/2004	2004-7/31
	26792	R590-187	AMD	1/8/2004	2003-23/44
	26885	R590-187	NSC	3/1/2004	Not Printed

**TOWING**

Public Safety; Highway Patrol	27100	R714-600	EXT	8/6/2004 see 5YR DAR No. 27337	Not Printed
	27337	R714-600	5YR	8/6/2004	2004-17/57

**TRAFFIC VIOLATIONS**

Public Safety; Driver License	27142	R708-3	EMR	5/5/2004	2004-11/88
	27251	R708-3	AMD	8/17/2004	2004-14/30

**TRAINING**

Natural Resources; Wildlife Resources	27346	R657-46	EXT	10/19/2004 see 5YR DAR No. 27500	Not Printed
	27500	R657-46	5YR	10/19/2004	2004-22/70

**TRAINING PROGRAMS**

Human Resource Management; Administration	27173	R477-10	NSC	7/1/2004	Not Printed
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COMPLETE 2004 RULES INDEX

**TRANSPORTATION**

Administrative Services; Finance	27120	R25-7	AMD	7/1/2004	2004-10/4
	27164	R25-7-6	AMD	7/2/2004	2004-11/4
Transportation; Administration	26720	R907-67	NEW	1/5/2004	2003-22/50
Transportation; Operations, Maintenance	27111	R918-4	AMD	7/20/2004	2004-10/33
Transportation; Preconstruction	27156	R930-3	AMD	7/20/2004	2004-11/84

**TRANSPORTATION SAFETY**

Transportation; Motor Carrier	26823	R909-1	AMD	3/1/2004	2003-24/66
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**TRESPASS**

Natural Resources; Parks and Recreation	27442	R651-620	AMD	11/16/2004	2004-20/32
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**TRUANCY**

Education; Administration	27531	R277-607	5YR	11/5/2004	2004-23/57
	27340	R277-609	5YR	8/10/2004	2004-17/55

**TRUCKING INDUSTRIES**

Tax Commission; Auditing	27388	R865-6F-8	AMD	10/19/2004	2004-18/58
	27386	R865-6F-36	AMD	10/19/2004	2004-18/61

**TRUCKS**

Transportation; Motor Carrier	26823	R909-1	AMD	3/1/2004	2003-24/66
Transportation; Motor Carrier, Ports of Entry	26881	R912-14	5YR	1/5/2004	2004-3/51

**UNDERGROUND INJECTION CONTROL**

Environmental Quality; Water Quality	27276	R317-7	AMD	10/26/2004	2004-15/37
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**UNDERGROUND STORAGE TANKS**

Environmental Quality; Environmental Response and Remediation	27194	R311-200	AMD	9/9/2004	2004-12/27
	27195	R311-201	AMD	9/9/2004	2004-12/30
	27196	R311-203	AMD	9/9/2004	2004-12/34
	27197	R311-204	AMD	9/9/2004	2004-12/37
	27198	R311-205	AMD	9/9/2004	2004-12/39
	27199	R311-206	AMD	9/9/2004	2004-12/44
	27200	R311-212	AMD	9/9/2004	2004-12/48

**UNEMPLOYMENT COMPENSATION**

Workforce Services; Workforce Information and Payment Services	26921	R994-102	AMD	4/4/2004	2004-4/38
	26922	R994-103	REP	4/4/2004	2004-4/40
	26923	R994-104	REP	4/4/2004	2004-4/41
	26928	R994-201	AMD	4/4/2004	2004-4/42
	27470	R994-201-101	AMD	11/16/2004	2004-20/39
	27583	R994-305	5YR	12/10/2004	2005-1/35
	27237	R994-305-801	AMD	8/3/2004	2004-13/49
	27297	R994-309	5YR	7/14/2004	2004-15/66
	27300	R994-310	5YR	7/14/2004	2004-15/66
	27318	R994-310	AMD	9/24/2004	2004-16/31
	27298	R994-311	5YR	7/14/2004	2004-15/67
	27299	R994-312	5YR	7/14/2004	2004-15/67
	27469	R994-401	R&R	11/16/2004	2004-20/40
	27193	R994-401-207	AMD	7/19/2004	2004-12/68
	27471	R994-403	R&R	11/16/2004	2004-20/47
	26930	R994-404	R&R	4/4/2004	2004-4/43
	26996	R994-404-101	NSC	5/1/2004	Not Printed
	27253	R994-404-101	AMD	8/18/2004	2004-14/34
	27192	R994-405	AMD	7/19/2004	2004-12/70
	27472	R994-405	AMD	11/16/2004	2004-20/66
	26924	R994-406	AMD	4/4/2004	2004-4/45
	27473	R994-406-505	AMD	11/16/2004	2004-20/73
	26929	R994-508	R&R	4/4/2004	2004-4/51
	26995	R994-508	NSC	5/1/2004	Not Printed
	27133	R994-508-307	NSC	7/1/2004	Not Printed

**UNINSURED EMPLOYERS**

Labor Commission; Industrial Accidents	27595	R612-9	5YR	12/17/2004	2005-2/169
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<b><u>UOCAVA (Uniformed and Overseas Absentee Voting Act)</u></b>					
Lieutenant Governor; Elections	27406	R623-4	EMR	9/10/2004	2004-19/45
<b><u>USER TAX</u></b>					
Tax Commission; Auditing	27092	R865-21U-1	AMD	6/29/2004	2004-9/56
	27078	R865-21U-12	AMD	6/29/2004	2004-9/58
<b><u>UTAH.GOV</u></b>					
Governor; Planning and Budget, Chief Information Officer	26953	R365-4	NEW	4/15/2004	2004-5/12
<b><u>UTILITY SERVICE</u></b>					
Public Service Commission; Administration	26780	R746-200-6	AMD	1/7/2004	2003-23/76
<b><u>VACATIONS</u></b>					
Human Resource Management; Administration	27166	R477-7	AMD	7/2/2004	2004-11/42
	27272	R477-7-16	NSC	7/2/2004	Not Printed
<b><u>VICTIM COMPENSATION</u></b>					
Crime Victim Reparations; Administration	27157	R270-1	AMD	7/2/2004	2004-11/7
<b><u>VICTIMS OF CRIME</u></b>					
Crime Victim Reparations; Administration	27157	R270-1	AMD	7/2/2004	2004-11/7
<b><u>VIOLATION</u></b>					
Natural Resources; Wildlife Resources	27497	R657-26-5	AMD	12/2/2004	2004-21/21
<b><u>VOTING</u></b>					
Lieutenant Governor; Elections	27123	R623-2	NEW	6/16/2004	2004-10/24
<b><u>WAGES</u></b>					
Human Services; Recovery Services	27391	R527-300	AMD	11/30/2004	2004-18/27
<b><u>WASTE DISPOSAL</u></b>					
Environmental Quality; Solid and Hazardous Waste	27288	R315-317-2	AMD	9/15/2004	2004-15/36
	26972	R315-320	5YR	3/1/2004	2004-6/61
Environmental Quality; Water Quality	26796	R317-1	AMD	3/29/2004	2003-23/16
<b><u>WASTEWATER</u></b>					
Environmental Quality; Water Quality	27179	R317-100-3	AMD	8/20/2004	2004-11/15
	27180	R317-103	REP	8/20/2004	2004-11/16
	26797	R317-401	NEW	7/2/2004 see CPR in 04/15/2004 Bulletin	2003-23/21
	26797	R317-401	CPR	7/2/2004	2004-8/89
<b><u>WASTEWATER TREATMENT</u></b>					
Environmental Quality; Water Quality	27022	R317-10	AMD	6/23/2004	2004-8/52
<b><u>WATER FUNDING</u></b>					
Natural Resources; Water Resources	26779	R653-2	AMD	1/7/2004	2003-23/56
<b><u>WATER POLICY</u></b>					
Natural Resources; Water Resources	26784	R653-5	AMD	1/7/2004	2003-23/59
<b><u>WATER POLLUTION</u></b>					
Environmental Quality; Water Quality	26796	R317-1	AMD	3/29/2004	2003-23/16
	26242	R317-2	AMD	1/6/2004 see CPR in 09/15/2003 Bulletin	2003-10/27
	26242	R317-2	CPR	1/6/2004	2003-18/35
	26903	R317-8	AMD	3/30/2004	2004-3/19
	27022	R317-10	AMD	6/23/2004	2004-8/52
<b><u>WATER QUALITY</u></b>					
Environmental Quality; Water Quality	27021	R317-6	AMD	7/12/2004	2004-8/46
	27177	R317-6	AMD	8/20/2004	2004-11/8
	27437	R317-6-6	NSC	12/1/2004	Not Printed

COMPLETE 2004 RULES INDEX

	27276	R317-7	AMD	10/26/2004	2004-15/37
	27180	R317-103	REP	8/20/2004	2004-11/16
<b><u>WATER QUALITY STANDARDS</u></b>					
Environmental Quality; Water Quality	26242	R317-2	AMD	1/6/2004 see CPR in 09/15/2003 Bulletin	2003-10/27
	26242	R317-2	CPR	1/6/2004	2003-18/35
<b><u>WATERFOWL</u></b>					
Natural Resources; Wildlife Resources	27367	R657-9	AMD	10/19/2004	2004-18/47
<b><u>WEAPONS</u></b>					
Human Services; Youth Corrections	27267	R547-14	NSC	7/1/2004	Not Printed
<b><u>WEATHER MODIFICATION</u></b>					
Natural Resources; Water Resources	26784	R653-5	AMD	1/7/2004	2003-23/59
<b><u>WILD TURKEY</u></b>					
Natural Resources; Wildlife Resources	27498	R657-54	NEW	12/2/2004	2004-21/23
<b><u>WILDLIFE</u></b>					
Natural Resources; Wildlife Resources	26817	R657-5	AMD	1/21/2004	2003-24/46
	27159	R657-5	AMD	7/2/2004	2004-11/74
	27283	R657-6	AMD	9/1/2004	2004-15/55
	27367	R657-9	AMD	10/19/2004	2004-18/47
	27368	R657-10	AMD	10/19/2004	2004-18/49
	27369	R657-11	AMD	10/19/2004	2004-18/51
	26659	R657-13	AMD	1/2/2004	2003-20/28
	26818	R657-17-4	AMD	1/21/2004	2003-24/55
	27497	R657-26-5	AMD	12/2/2004	2004-21/21
	27158	R657-27	AMD	7/2/2004	2004-11/77
	26867	R657-33	AMD	2/24/2004	2004-2/3
	26819	R657-38	AMD	1/21/2004	2003-24/56
	26778	R657-41	AMD	1/5/2004	2003-23/61
	26820	R657-42	AMD	1/21/2004	2003-24/61
	27239	R657-42	AMD	8/3/2004	2004-13/41
	27346	R657-46	EXT	10/19/2004 see 5YR DAR No. 27500	Not Printed
	27500	R657-46	5YR	10/19/2004	2004-22/70
	27240	R657-50	AMD	8/3/2004	2004-13/44
	27498	R657-54	NEW	12/2/2004	2004-21/23
<b><u>WILDLIFE CONSERVATION</u></b>					
Natural Resources; Wildlife Resources	26819	R657-38	AMD	1/21/2004	2003-24/56
<b><u>WILDLIFE LAW</u></b>					
Natural Resources; Wildlife Resources	27369	R657-11	AMD	10/19/2004	2004-18/51
	26659	R657-13	AMD	1/2/2004	2003-20/28
	27158	R657-27	AMD	7/2/2004	2004-11/77
<b><u>WILDLIFE PERMITS</u></b>					
Natural Resources; Wildlife Resources	26778	R657-41	AMD	1/5/2004	2003-23/61
<b><u>WITNESS FEES</u></b>					
Labor Commission; Adjudication	26772	R602-1	AMD	1/2/2004	2003-23/46
<b><u>WOOD FURNITURE</u></b>					
Environmental Quality; Air Quality	27144	R307-343	EXT	6/8/2004 see 5YR DAR No. 27219	Not Printed
	27219	R307-343	5YR	6/8/2004	2004-13/69
<b><u>WORK-BASED LEARNING PROGRAMS</u></b>					
Education; Administration	27212	R277-916	5YR	6/1/2004	2004-12/80

**WORKERS' COMPENSATION**

Labor Commission; Adjudication	26773	R602-2-1	AMD	1/2/2004	2003-23/47
	27492	R602-2-4	AMD	12/2/2004	2004-21/17
Labor Commission; Industrial Accidents	27493	R612-4-2	AMD	12/2/2004	2004-21/19
	27595	R612-9	5YR	12/17/2004	2005-2/169
Workforce Services; Workforce Information and Payment Services	26930	R994-404	R&R	4/4/2004	2004-4/43
	26996	R994-404-101	NSC	5/1/2004	Not Printed
	27253	R994-404-101	AMD	8/18/2004	2004-14/34

**WORKFORCE INVESTMENT ACT**

Workforce Services; Employment Development	27393	R986-600	AMD	11/1/2004	2004-18/66
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**YOUTH**

Human Services; Administration, Administrative Services, Licensing	26804	R501-16	AMD	4/12/2004	2003-24/29
	26874	R501-16	NSC	5/1/2004	Not Printed